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CLASSICS OF INTERNATIONAL LAW

EDITED BY
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DE LEGATIONIBUS
LIBRI TRES

BY ALBERICO GENTILI

- VOL. I. A Photographic Reproduction of the Edition of 1594, with an Introduction by Ernest Nys, and a List of Errata.
- VOL. II. A Translation of the Text by Gordon J. Laing, with a Translation (by E. H. Zeydel) of the Introduction by Ernest Nys, and an Index of Authors Cited by Herbert F. Wright.

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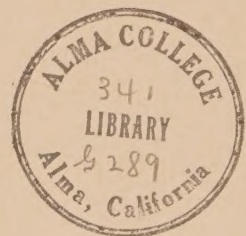
DE LEGATIONIBUS LIBRI TRES

BY
ALBERICO GENTILI

VOLUME TWO
THE TRANSLATION

BY GORDON J. LAING
Professor of Latin in the University of Chicago

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INTRODUCTION

By ERNEST NYS

TRANSLATION BY EDWIN H. ZEYDEL

INTRODUCTION

In the city of London not far from the great avenues of communication, there is, situated at the foot of an old cemetery planted with shrubs, an ancient building, the Church of St. Helena. In reality the edifice consists of a parish church and of the chapel of a convent of sisters of the Benedictine Order, both combined under the name of the mother of Constantine the Great; against the parish church the religious had built their oratory. That was in the first years of the thirteenth century; it is probable that at that time the parish church was rebuilt and that not long after the chapel was annexed to the building already standing; the edifices placed side by side formed the church almost as it has been preserved.

We do not intend to set forth the importance of the historical character of the Church of St. Helena; it is sufficient for us to say that beautiful funeral monuments ornament it and make it a place of pilgrimage for the lover of art. In 1877 a commemorative tablet was erected and serves to add to the interest of a place marked for attention; as the result of a learned lecture with which Professor Thomas Erskine Holland, today Sir Thomas Erskine Holland, opened, at the University of Oxford, the course of international law and diplomacy which had been entrusted to him, a movement was set on foot to honor the memory of Alberico Gentili, assuredly an illustrious master of the science of the Law of Nations. Of black marble, the monument reproduces, with some lines of explanation concerning its execution, the epitaph handed down by Georg Matthias Koenig in the *Bibliotheca vetus et nova*, which he published in 1678; in the corners there stand out in white marble veined with gray, an escutcheon and armorial bearings.

I

Alberico Gentili was born on January 14, 1552, at Castello di San Ginesio in the March of Ancona. His father, Matteo Gentili, was a distinguished and resolute man; he was inclined to new ideas and in his early life associated with daring thinkers. We can not lose sight of the fact that in the Italian schools and universities the spirit of

liberty had its adherents, even outside of the religious movement. Matteo Gentili had undergone at Pisa the intellectual influence of Simon Porta, who had been the disciple of Pietro Pomponazzi, a bold spirit if there ever was one. Simon Porta taught philosophy in a number of Italian cities and died at Naples in 1554 at the age of fifty-seven years. Pietro Pomponazzi died as professor at Padua about 1526. He was a negator of the immortality of the soul.

Matteo Gentili belonged to a family which counted many members devoted to the study of law or medicine. He chose the profession of medicine and without doubt gave proof of ability and merit, for when he was an exile from his native country and was established in Carniola he was appointed chief physician of the duchy.

Alberico was the eldest of seven children issued from the marriage of Matteo Gentili and Lucrezia Petrelli. He made his first studies at San Ginesio and at the age of fifteen was sent to the University of Perugia to be moulded there for the juridical science.

Perugia, the principal place in Umbria, had been one of the powerful Etruscan cities in the first years of its history; many times destroyed, yet always arising again from its ruins, it was in the fourteenth century of our era very important and was engaged actively in the political events that were enacted in the agitated and feverish Italian countries. The city of Perugia was essentially Guelfic; it showed itself faithful to the Popes, and the Roman pontiffs took refuge there and availed themselves of the safe situation which it offered in the mountains when revolt threatened them in Rome.

The University of Perugia was celebrated; among its professors of law were Cino da Pistoia, Bartolus, and Baldus. The instruction was assuredly free, for Cino figured among the ardent protagonists of the Empire during the violent quarrels of the first third of the fourteenth century. Bartolus taught also in other universities; his days were short; he died at Bologna in 1357 at the age of forty-three and one-half years, and the city which had adopted him showed a desire to express its gratitude for the manifold services which the learned master had rendered it, by erecting in the Church of St. Francis a magnificent tomb with this inscription: *Ossa Bartoli*. Baldus de Ubaldis died in 1400.

Alberico Gentili obtained the hood of the doctorate of law on September 22, 1572. The university had been established in 1276; the bull of erection, however, dated only from 1307. The two great

centers of education, Bologna and Perugia, were under pontifical jurisdiction. The glory of Bologna it is superfluous to mention; but great also was the renown of Perugia. Speaking of the "Alma Mater" which had permitted him to enter the refreshing road of study and research, Gentili is full of lively praise; he attests notably that the honor of the faculty of law has been maintained since the time of the great educators whom we have just mentioned. At this time seventy doctors of law resided at Perugia and twenty-five of them gave lectures. Gentili mentions his own teachers: Rinaldo Rodolfini, Nonius, Lancelotto, Severo, Eugenio, Galiffe.

On November 6, 1572, the young jurist was chosen judge at Ascoli; but he soon resigned these duties and returned to his native city, Castello di San Ginesio, whither he was called in 1575 to fill the position of city advocate. In 1579 the storm fell on Matteo Gentili and his eldest son. Both were prosecuted as heretics by the tribunal of the Inquisition; several members of the family were implicated in the trial; the case ended at Rome on February 2, 1581, by the condemnation of the accused to life imprisonment and the confiscation of their property.

Matteo succeeded in escaping in company with his son Alberico; he was successful in having his youngest son Scipio join him. This occurred in 1579. His exile was established first at Laybach, where doubtless the protecting influence of his brother-in-law Nicolo Petrelli, who commanded Trieste, was offered to him. Nevertheless, he was soon compelled to cast about for a new place of refuge. Religious persecution developed in the little city of Carniola; Matteo sent Scipio to the University of Tübingen; Alberico departed for England; Matteo too repaired to the latter country where he remained for twenty-two years and where he died in 1602.

Ever since the first days of the Reformation the Lutheran doctrine had won faithful adherents in Italy. In 1519 writings of the master began to be disseminated; works of Melanchthon, Zwingli and Bucer were translated. The war which broke out in 1526 helped in the diffusion of the new ideas. The ecclesiastical authority was weakened and in the army which conquered Rome and remained for a long time at Naples many Protestants served. In 1530 there appeared at Venice an Italian translation of the New Testament and the entire Bible was printed in 1532.

A hearth of propaganda was established at Ferrara, where in 1527 Renée de France, daughter of Louis XII and wife of Ercole

d'Este, had introduced into the country the new beliefs and had formed a church in which famous dissenters such as John Calvin and Clement Marot were received and which exercised an influence until 1550.

However, we must guard against exaggeration; undoubtedly Protestantism spread from Ferrara to Modena and as early as 1542 it was said that this city was a *citta Lutherana*. From 1528 on adherents of the emancipation movement were assembled at Venice; during the same period Vicenza and Treviso, dependent cities of the Republic, had witnessed the formation of small congregations. Yet the movement had no real power and no irresistible impetus. "Italy exhausted by her previous efforts," writes Elisée Reclus, "was at the height of reaction, her soil wasted and scorched, as it were, no longer able to nourish new crops. Even what had once been exuberant Florence was now nothing but a gloomy city without moral life and hope. Having become the absolute masters of what had been the republic of free men, the Medicis had taken care to throw back into a state of torpor the active and ingenious citizens of the noble city in order to make of them faithful subjects and to keep them away from the heretical propaganda; they had forbidden travel to these 'insuppressible' sons of travelers who had been compared to the 'fifth element'. They succeeded in penning up the Florentines, in imprisoning them so to speak, and the latter, ceasing to know the exterior world, were likewise unknown by it. Aside from a few exiled Tuscan families, some fugitive Ferrarese and some Vaudois mountaineers, heirs of the ancient 'noble Leysin', the history of the Reformation mentions but few Italian names."

The spirit of persecution was aroused in the ranks of those who directed the Catholic Church. In 1555 Giovanni Pietro Caraffa was elected Pope with the name of Paul IV; he reorganized the ecclesiastical jurisdiction and established everywhere inquisitors charged with coming to the aid of the faith; he frequently used laymen, because many priests and bishops inspired him with distrust with regard to the purity of their beliefs. Giovanni Angelo de Medici received the tiara in 1559 with the name of Pius IV. Early in 1566 Michele Ghisleri, who took the name of Pius V, succeeded Pius IV; during a pontificate of six years he acted with formidable vigor against heresy.

II

Alberico Gentili received a kindly welcome in the country which he had chosen as his new home. A young scholar, he had been sentenced for his religious convictions by the ecclesiastical judges of a power which was the inveterate enemy of Queen Elizabeth. Had not Pius V hurled the ban of excommunication against the sovereign, had he not deposed her from her throne? In the field of the universities the Middle Ages were fond of the migration of teachers and students, and one circumstance favored this life full of movement and action, namely the fact that a single language was common to the civilized world, the Latin. Moreover, the relations between Italy and England with regard to education were reaching a point of great intimacy. Need we recall the name of Vacarius? Theobald of Elampes held the Archbishopric of Canterbury from 1139 to 1161. His secretary was John of Salisbury and he was the patron of Thomas à Becket, who in turn became Archbishop of Canterbury and was murdered in his cathedral at the altar rail on December 29, 1170. Theobald had encouraged the practice of appeal to the courts of Rome and he had had occasion to conduct negotiations himself with the Papal Court. Becket, who had studied law at Bologna, was charged, it seems, with bringing from Italy a *causidicus*, a pleader, a counsellor, versed in juridical science. The fact remains that Vacarius came to England. He was doubtless of the School of Bologna, writes Sir Thomas Erskine Holland, but it is difficult to admit that he belonged to the generation which followed the courses of Irnerius. The information which we possess with respect to him shows him giving lectures in Roman law at Oxford in 1149 to an audience of rich students and poor students. As early as the thirteenth century numerous English students went to Italy to mould themselves in the juridical science. Civil law called them to Bologna. Canonical law attracted them to the same city and to Pavia. The young ecclesiastics liked to prepare themselves for the advantageous career of archdeacon in which the exercise of a real power was combined with the enjoyment of bounteous fees. Already in the preceding century John of Salisbury had asked the question whether an archdeacon can save his soul (*an possit archidiaconus salvus esse*), alluding to the dangers to which his morality was exposed.

Some Englishmen secured the degree of doctor in law, especially at Bologna, where in 1502 John Clerk was graduated. He later became Bishop of Bath and Wells, and Master of the Rolls. Italians were very frequently in the service of the Kings of England. Thomas

Hannibal is mentioned, who was Master of the Rolls from 1523 to 1527, in the reign of Henry VIII. This monarch had as his secretaries Andrea Ammonio and Pietro Vanues. The Italian physicians were highly esteemed in London and several of them were attached to the persons of rulers.

The religious persecution which raged in almost all countries brought it about in the sixteenth century that groups of co-religionists were formed who quite naturally gave assistance to those sharing their faith.

With regard to England we observe that numerous scholars expelled by fanaticism sought refuge there. It is an apparent fact that the Italians were active in that country. "Together with their taste for elegant studies," says Charles de Rémusat, "they brought for the most part the spirit of investigation and a certain liberty of thought." Some names must be mentioned. Already in the reign of Edward VI there came to England Bernardino Ochino and Pietro Martire Vermigli. That was in 1547; the former had been a member of the Capuchin Order, the latter had been a canon regular of St. Augustine. Both embraced the Reformation. Cranmer, Archbishop of Canterbury, had made an appeal to their zeal and science; Pietro Martire was given a chair of philosophy at Oxford. In 1553 the death of Edward VI and the advent of Mary Tudor brought about a radical change in the political and the religious order; the two heretics had to seek refuge on the continent.

Under Elizabeth the number of Italian adherents of the Reformation was relatively considerable; she was their patroness; she was fond of their civilization and she wrote and spoke their language.

There are some celebrated names. Giacomo Conzio, Acontius, born at Trent, at the beginning of the sixteenth century, was famous as a philosopher, jurist and theologian. He became a priest and withdrew to England, where Queen Elizabeth treated him with favor. In 1565 he published at Basel his work *De stratagematibus Satanae in religionis negotio* ("The Strategems of Satan in the Matter of Religion"). "He reduced to a small number the requirements for salvation and he demanded tolerance for the beliefs which combated the other articles." Such is the résumé given by Pierre Bayle. Conzio died soon after 1565.

It was given to Alberico Gentili to know the genius that called himself Giordano Bruno. He proclaimed the necessity and the beauty of tolerance; he affirmed that tolerance is a natural law impressed on

all hearts of noble birth, the fruit of cultivated reason, and is an irresistible requirement of logic, as well as a precept of morality and religion. Giordano Bruno lived in England for two years. He left in 1585.

The name of Sir Thomas Erskine Holland is inseparable from that of Alberico Gentili. We recall his inaugural lecture of November 7, 1874. Without doubt the writers of the Law of Nations were familiar with the existence of the author of *De jure belli* and other works important for science; they cited the titles of his books, but their knowledge was superficial and their conceptions vague. It redounds to the credit of Sir Thomas Erskine Holland to have brought to light the historical figure of the Italian exile whom the University of Oxford received with such kindness and who responded so nobly to the confidence of his patrons. The lecture even assumed an unexpected importance, for a beautiful monument was placed before the Church of St. Helena at London and committees were formed in Italy. In 1908 the statue of Alberico Gentili was unveiled in the city of his birth.

The inaugural lecture contains details which we may reproduce with regard to the first period of the young exile's stay in England. It seems that he arrived in August, 1580, armed with letters of recommendation for the small congregation of Italian Protestants that had formed in the capital. He found support in Battista Castiglioni, who was the Italian teacher of Queen Elizabeth, and in Tobie Matthew, who in 1579 had occupied the functions of Vice-Chancellor of Oxford and became successively Bishop of Durham and Archbishop of York. It is thought that thanks to them he obtained the protection of Robert Dudley, Earl of Leicester, who since 1564 had been Chancellor of the University of Oxford. The Earl of Leicester was the son of the Duke of Northumberland, who had been condemned to death and executed in 1553 for having supported the cause of Jane Grey. He was the great favorite of Queen Elizabeth. In 1585 he was charged by his sovereign with defending the considerable interests that she had in the United Provinces. On August 10, 1585, Elizabeth promised to assist the young republic and to send it four thousand infantrymen and four hundred cavalrymen, but a little later she increased this force to seven thousand infantrymen and six hundred cavalrymen. The Earl of Leicester was placed in command. In 1588 he died in England, where he had been named Lieutenant General of the army. The Earl of Leicester was the uncle of Sir Philip Sidney, the celebrated poet, the author of *Arcadia* and the *Defense of Poesie*, who died in

1586 at the age of thirty-six years as the result of a wound received in an encounter with the Spaniards near Zutphen.

The Earl of Leicester recommended Alberico Gentili to the academic authorities; he described him as a man obliged to leave the country of his birth for religious reasons, desirous of being incorporated in the university and of devoting some time to teaching and the exercise of his profession in general. The letter is dated November 24, 1580. Its effect was very great. Two letters from the hand of Gentili are in the Record Office of London; they bear the dates of December 28, 1580, and January 27, 1581. To Arthur Atey, the secretary of the Earl, the protégé writes how he welcomed the assistance which had been accorded him. In fact he was admitted to New Inn Hall; he obtained modest scholarships in Merton College and other colleges. He received a subsidy from the University treasury. One of his works informs us that he gave his first lecture in St. John's College. He was "incorporated" on March 6, 1581.

"Incorporation" was the admission of a young scholar with the degree that he had obtained in a foreign university. Some examples will not be without historical interest. In 1552 Valentine Dale had the degree which he had secured in a French university, probably Orleans, recognized at Oxford. In 1573 Pierre Pithou, a student of Cujas and a licentiate in law of the University of Bourges, was "incorporated" as bachelor in civil law; it is known that he made his mark in public law and in civil law and that he was a historian and a philologist, as well as a jurist. In 1581 the incorporation of Jean Hotman, doctor in law of the University of Valencia, and the incorporation of Alberico Gentili, doctor in law of the University of Perugia, took place.

The eldest son of François Hotman, Jean Hotman, later Sieur de Villiers Saint-Paul, was born at Lausanne in 1552. Turbulent and violent, profoundly learned, François Hotman taught with great success in a number of universities. He embraced Protestantism and participated zealously in the religious struggles. It was planned to call him to Oxford; the list of university centers in which he occupied a chair of Roman law is rather long: Paris, Lausanne, Strasbourg, Valencia, Bourges, Geneva, and Basel. "In his wandering life," writes Alphonse Rivier, "Hotman was extremely active for good and for evil, worked incessantly, produced much, marked both by depth and by good form. Far from being a specialist, his interest extended over the most varied fields, politics and theology, no less

than law, and feudal law as well as Roman law. His researches which go into the greatest detail, give proof of a surprising erudition, his Latin style is that of a consummate philologist, his French style is original and vigorous; all forms of composition are familiar to him, even including the burlesque." Jean Hotman studied at Paris and then at Valencia. Since his opinions were bound to obstruct his career in France, he planned to migrate. He accompanied to Oxford the son of Sir Amyas Paulet, ambassador at Paris, in order to supervise the young man's studies. While directing the work of his student he continued his own studies. In 1581 he was at Christ Church College and on March 6, 1581, he was "incorporated." On the same day, as we have just seen, Alberico Gentili was admitted among the doctors in civil law at Oxford by virtue of his Italian academic title.

Jean Hotman entered into the service of the Earl of Leicester as a secretary. It is thus that he was received at court, where he established valuable relations. He became the friend of Sir Philip Sidney whom he had known at Oxford, and among those who held him in esteem were also Sir Thomas Bodley and William Camden.

In 1583 Jean Hotman taught law at the University of Caen, but he soon resumed his duties as secretary to Leicester, accompanying the latter when Elizabeth sent him on a mission to the United Provinces.

In 1582 Alberico Gentili published his six dialogues on the interpreters of law (*De juris interpretibus dialogi sex*), which he dedicated to the Earl of Leicester. In happy terms he expressed in his preface all the gratitude that he owed to his noble protector and to the university which had received him with such kindness. He celebrated also the charms of the city, its beautiful buildings, its schools, its students, and its famous teachers.

"The century of the year 1500," writes Etienne Pasquier in his *Recherches sur la France*, "brought us a new study of laws, which was to perform a marriage with the study of jurisprudence and humane letters by means of a clear and polished Latin; and it found three principal inaugurators of this new order, Guillaume Budé, French, Andrea Alciati, Italian from Milan, and Ulrich Zasius, German, born in the city of Constance." Thus homage was rendered to the initiators of the Second Renaissance of Roman law, Guillaume Budé, jurist, philologist and scholar, Andrea Alciati, endowed with the most brilliant qualities, and Ulrich Zasius, learned and skilful. "All the sciences," wrote Zasius in 1520 to Alciati, "have laid aside their ugly raiments, only jurisprudence preserves its rags." The word of order was given

and the attempt was made. First of all it was necessary to study the sources from the juridical point of view, but the program was soon considerably enlarged at the advent of the glorious epoch of French jurists, François Douaren, François Bauduin, François Hotman, Jacques Cujas, Hugues Doneau, and Barnabé Brisson. It is always difficult to classify in order of merit the masters of a science. In the sixteenth century the task was to return to true Roman law and to do away with the numerous errors introduced through practice. Particularly distinguished was Jacques Cujas, whom Alphonse Rivier does not hesitate to call the greatest jurist of modern times; perhaps Hugues Doneau takes his place immediately after the celebrated teacher whose principal qualities he too possessed, adding to them his talent as an artist and a poet.

In his *De juris interpretibus dialogi sex*, Alberico Gentili shows himself to be out of sympathy with any innovation. "He was," writes Sir Thomas Erskine Holland, "a civilian of the old school and he took an active part in the bitter controversy then raging between his masters, the Bartolists and such men as Cujas and François Hotman." He was even, it may be said, the implacable enemy of Cujas who renounced the texts and had abandoned the teaching of the writers of glossaries and commentaries; he had remained a Bartolist, following in this respect the numerous civilians of his time. He defended Accursius and Bartolus against Alciati; he refused to the latter and to Cujas the title of jurist.

In the earliest of his works Alberico Gentili does not shrink before strong words to affirm the feelings which animated him. He speaks against elegance and humanism and maintains that the jurist may despise Greek and not pay any attention to form; he reproaches precisely Alciati and Cujas for having been too eager for general culture and, while recognizing that their works deserve to be used, he advises students to pay only visits to the modern writers and to reserve their assiduous intercourse for the ancients. He confesses moreover that he has not read widely the writings of recent authors and that he is too busy with his pupils who, under the guidance of Griffin Lloyd, are more desirous of acquiring a solid knowledge of law than of familiarizing themselves with the style of new literature. In those times insults moved about readily and Alberico Gentili suffered a full measure of coarse epithets for having criticized, as he had done, the leaders and the disciples who were bent on bringing about the triumph of the elegant school. In the reign of Elizabeth questions of public law and of the Law of Nations were treated by eminent jurisconsults.

In 1572 the case of John Leslie, Bishop of Ross, came up. He had been devoted to the cause of Queen Mary Stuart. Born in 1527, John Leslie made his studies at Aberdeen and subsequently pursued courses at Paris, Poitiers, and Toulouse. He obtained the degree of doctor in law at Paris. In 1554 he was ordained and summoned to the functions of Vicar-General of Aberdeen. In 1568 he was named by Mary Stuart as member of the commission which Elizabeth of England had charged with studying the difference that arose between the Queen of Scots and her subjects. At the same time Mary Stuart had sought refuge in England. During this period also he was named ambassador of the Queen of Scots to the Queen of England. He gave proof of zeal and devotion and soon the accusation was made against him of having incited a rebellion against the sovereign to whom he was accredited in order to save the unfortunate Mary Stuart from a death which appeared certain. He invoked the privileges of his office; he called attention to the fact that he had limited himself to efforts to procure liberty for an unfortunate princess. The juridical problem arose. The English Government submitted the case to a commission of jurists trained in Roman law and members of the famous association which had been formed at London in 1511 and existed until 1858. Members of the college were the doctors in law sitting in the ecclesiastical courts and in the court of admiralty or practicing before these courts. Leslie was thrown into the Tower of London. Freed in 1573 and banished from England, he retired to the continent. He died at Brussels in 1596.

In 1584 a celebrated case in the history of the Law of Nations occurred in England. Abraham de Wicquefort gives the account of it in several lines: "Don Bernardino de Mendoza, ambassador of the King of Spain to the Queen of England," he writes, "was continually intriguing against the person of the Queen and her State. He had taken part in the conspiracy which Throckmorton had hatched against the life of the Queen and he had played a principal part in several other dangerous plots. The Council, having summoned him, reproached him very severely for his conduct and informed him that he would have to depart from the kingdom as soon as possible, and since he did not hasten sufficiently he was placed upon the vessel of Captain Hawkins who transported him to Calais."

Jean Hotman dealt with the case. "In the act of the ambassador of Spain," he wrote in 1616, in the fourth edition of his book, *De la charge et dignité du l'ambassadeur*, the first edition of which was pub-

lished in 1603, "the late Queen of England did not avail herself of seizure but gave him two weeks to depart from her kingdom. That was not done without examining whether it was lawful to retain and punish him, saying that in vain he appeals to the immunity of the nations who violates the Law of Nations, and of this there are enough examples: or at least if he is guarded until his sovereign is informed and the advice of the latter is sought. Finding myself at that time at the court of England, several members of the Council and some of the highest lords did me the honor, as they also honored the late Doctor Alberico Gentili, of consulting me, although this kingdom does not lack persons of experience and erudition. We told them that the most expedient and customary method and the one most salutary for the State was to advise his sovereign and to await his approval or disapproval; but the gentleman whom they sent was neither seen nor heard by the late King of Spain, who let himself be excused because of indisposition in order not to be compelled to give his approval or disapproval. They were also made to consider that the offense was simply planned, not executed, not begun, as the logicians say." Alluding to the request for consultation which was made of him and to which he acceded, Alberico Gentili said that he discussed the difficult question with the Earls of Leicester and Pembroke and with other learned and noble men.

In 1585 he published at London his work on the right of ambassadors (*De legationibus libri tres*), which he dedicated to Philip Sidney. The treatise has been the object of diverse estimates. Opposing the exaggerated praises of it, there are lively criticisms. A complete treatment of the matter can not be found in this volume of a hundred and forty-six pages, but it would be unjust to deny it any value, and one merit should be conceded to it, namely, that it forms the first systematic work in this special field of the Law of Nations.

We have already mentioned the work of Hotman concerning the duty of the ambassador. It aroused a violent polemic. In fact the author was accused of having plagiarized the *Legatus* of Charles Paschal which had appeared at Rome in 1598. Hotman explained it. "Furthermore," he wrote, "I am so far from being ashamed of having looted any other old and new writers that I even avow that the great part of it is either the result of my reading or of my relations with friends, excluding some thirty examples which have come within my own experience. From century to century, from hand to hand, we learn from each other. Few writers have done otherwise,

especially in serious discussion and matters of importance. Such a work without aid and counsel would be both too defective and too sterile. He who will read the writings of modern authors on this subject—Brunus, Magius, Gentili, le Vayer, Paschal, Kirchner, and others whom I have read—will see that they all borrow from each other, although each one of them has labored independently. At least I am the first, I believe, to have spoken of the duty of the ambassador in your language.”

The work had several editions and in 1646 it was translated into Dutch.

The case of Mary Stuart was the subject of numerous memoirs. Partisans of the accused and jurists of the English Government battled with skill, invoking writers and precedents.

By virtue of a statute passed in 1585 the unhappy princess was summoned on October 5, 1586, before a high court of justice, composed of forty-six members. The statute made it possible to prosecute and condemn to capital punishment any person who had claimed the crown of England or sought to wrest it from Queen Elizabeth by a foreign invasion or a plot against her person.

Mary Stuart was a prisoner for nineteen years. The trial took place at Fotheringhay Castle in the county of Northampton; the Commission met on October 11, 1586. On the next day two of its members and a notary brought Elizabeth's letter to Mary, Queen of Scots. She protested; the Queen of England pretended to order her as a subject to appear in judgment. She said that she too was a queen. She appeared before the Commission on October 14 and 15, accused of having taken part in the plot of Anthony Babington against the State and Crown. She declared that she did not recognize the powers of the Commission and that as a free princess and anointed queen she was subject only to God. She protested in her own name, in the name of her son and her successors, and in the name of all absolute kings.

The delicate points of the problem were set forth. The partisans of the Queen of Scots maintained that even in England she was subject to the Law of Nations and not to the jurisdiction of the country. They invoked the maxim that a peer has no power over a peer (*par in parem non habet potestatem*). The English jurists emphasized that her own subjects had deposed her, that she was not sovereign and that even if she were, she was still the vassal of Elizabeth. They added that a prince in leaving his territory renounces his inviolability and that to maintain the contrary would be equivalent to creating for

him a condition more favorable than that of the legitimate prince. They asserted that every person making himself guilty of a crime could be judged in the country in which he had committed it; that Mary Stuart was not subject solely to the Law of Nations since all strangers were subject to the positive law of the country. They voiced the opinion that in matters of treason there is no distinction of person. A king passing through the territory of another king or residing there, they said, is nothing more than a private individual and as a private individual he may be convicted of the crime of high treason.

The issue of the judicial drama is known; the work of iniquity was consummated. The commissioners continued the examination at Westminster in the absence of the accused. On October 25 they pronounced the condemnation. Several days later Parliament sanctioned the death sentence and on February 18, 1587, at Fotheringay Castle, the head of the unfortunate woman fell under the ax of the executioner.

One circumstance of the system of defense seems to have escaped the attention of the jurists and historians. The partisans of the unhappy queen insisted on the fact that she was dependent solely upon the Law of Nations, and that she was not subject to the law of the country. The distinction was neither a quibble nor a controversial cavil. In the final analysis it offered a solid basis of defense.

The exposition is found in the book of Jean Hotman. Written on the subject of the rights of ambassadors, it throws light upon the arguments of which we speak. For the case of the ambassador of Spain, Bernardino de Mendoza, who did not cease conspiring against Elizabeth, Jean Hotman examined the argument derived from the predominance of the Law of Nations. His explanation makes it possible to judge in all its significance the system adopted by the partisans of Mary Stuart. It resulted in the verification of the theory that the acts, even if they were true, were not punishable. "Distinction was formerly made," writes Hotman, "as to whether merely advice was given or a conspiracy planned without execution, or whether its effect ensued. For the Law of Nations by which ambassadors should be judged does not place the offense committed upon an equal basis with the offense planned, as do civil and municipal law in some countries, and does not punish the mere thought as it does the crimes of *lèse-majesté* perpetrated by subjects. Moreover, *lèse-majesté* is understood to be committed by subject against sovereign." It is true that on the question as to whether the Law of Nations punishes only a crime committed, there are divergencies of opinion. In 1616 Dominicus van

Arum taught that the Law of Nations punishes the attempt precisely because the institutions and customs of peoples punish it.

A Latin work appeared at Oxford in 1587 under the title, *De legato et absoluto principe perduellionis reo*. It studies the question whether the ambassador and the absolute prince himself should be punished by death when, in the territory of another prince, they hatch a conspiracy against the life of a prince or against the safety of the political community. The author pronounces himself in favor of the affirmative solution. Sir Thomas Erskine Holland thinks that the work is from the hand of one of the new recipients of the degree of doctor in law and that the arguments were furnished by Alberico Gentili.

III

At the time of the dispersion of the family, Scipio Gentili was sent by his father, a fugitive because of religion, to the University of Tübingen, where he pursued the courses of Martin Kraus, whose Latinized name was Crusius, professor of *belles-lettres* and a distinguished Hellenist. Scipio was a poet. The study of law attracted him and he acquired great celebrity as a jurist. He frequented the Universities of Wittemberg, Leyden and Basel. In 1589 he became doctor in law in this latter city and in 1590 he was professor at Altdorf, where in 1576 the city of Nürnberg had created an academy which in 1623 became a university and was united in 1809 with the University of Erlangen. At Leyden his teachers were Hugues Doneau and Justus Lipsius. At Altdorf he became the colleague of Hugues Doneau and later revised an edition of the latter's *Commentariorum juris civilis libri viginti octo*.

In the month of January, 1581, Alberico had obtained the authorization to teach Roman law at Oxford. With regard to his activity we have indications in his works, especially in dedications to these works. The case of the ambassador Bernardin Mendoza was the subject of a public dissertation in 1584, and the enlarged dissertation became several months later the work, *De legationibus libri tres*, of which we have spoken. From 1583 to 1587 the *Lectio-num et epistolarum quae ad jus civile pertinent libri I-IV* appeared. In 1586 the work, *Legalium comitiorum oxoniensium actio*, was composed, which the author dedicated to Griffin Lloyd, Regius Professor of Civil Law, of whom he speaks more than once in his works with respect.

In 1586 Alberico Gentili accompanied to Germany Horatio Palavicino whom the Queen had entrusted with a mission to the elector

of Saxony. We find him at Wittemberg, where he attended a formal lecture of Scipio. Giordano Bruno lived at that time in the little university town. Alberico Gentili was successful in having him named professor. At Wittemberg two works of Alberico Gentili are dated, one of them dedicated to the Dukes of Brunswick and Lüneburg, the other to Hartmann ab Erffa.

On June 8, 1587, Alberico Gentili was named Regius Professor of Roman Law. He succeeded Griffin Lloyd who had died on November 26, 1586. Lloyd had been Principal of Jesus College and Chancellor of the Diocese of Oxford.

Some remarks should be made with regard to the teaching of law during the sixteenth century in the English Universities of Oxford and Cambridge.

In 1535 Henry VIII ordered the suppression of instruction in "canonical and pontifical law" and he forbade in future the granting of the degree of doctor in this juridical discipline. It is true that in the reign of Mary Tudor the teaching of canonical law was reestablished, but when Elizabeth came to the throne she restored the order of her father again. Henry VIII, who as early as 1535 had favored the teaching of Roman law in the colleges of Oxford, established in 1540 in the two universities "regius" chairs of theology, civil law, medicine, Hebrew, and Greek. The monarch confirmed these establishments in 1546. To each professor was assigned an annual salary of forty pounds sterling.

At Cambridge the first incumbent of the course of civil law was Thomas Smith, who was succeeded in 1551 by Walter Hadden. At Oxford the series of regius professors of civil law begins with John Story. Thomas Smith who became dean at Carlisle, ambassador at the court of France and Secretary of State for Queen Elizabeth, composed in 1565 the interesting work *De republica anglorum, A Discourse on the Commonwealth of England*. At the time of his nomination to the newly created chair of Roman law he was teaching Greek. In order to prepare himself for the duties that had been entrusted to him, he went to the University of Padua, a famous center, where 20 professors were teaching civil law. He obtained the degree of doctor in law toward the end of 1541. Desiring to complete his education he visited several French universities on his homeward journey.

Tragic was the end of John Story who had been called in 1546 to the regius chair of civil law at Oxford. Since 1535 he had been teaching this discipline and in 1539 he had been admitted to the col-

lege of advocates at London. He became chancellor to the Bishop of London. In the reign of Mary Tudor he was the persecutor of the Protestants. When Elizabeth ascended the throne he fled to the southern part of the Netherlands where, it is said, he entered the service of the government of Philip V, and counselled enterprises against the security of the Queen, in whom he saw only the enemy of the Roman Church. He was watched and finally spirited away by means of treachery. Taken to England, he was condemned to death for treason. He died on the gallows after having suffered terrible tortures. That was in 1571; in 1886 he was beatified by Pope Leo XIII.

IV

It was customary at Oxford to submit some theses for discussion in the solemn graduation exercises. When in 1584 Robert Dudley, Earl of Leicester, Chancellor of the university, and Sir Philip Sidney, his nephew, inspected the colleges, the quite recent case of the ambassador of Spain instigating plots against the sovereign to whom he was accredited had furnished for Alberico Gentili the subject of a lecture, the first redaction of which had led to the publication of the treatise, *De legationibus*. In 1588 the newly appointed professor chose as his juridical question for the university ceremony the law of war. From this there arose a first study, *De jure belli commentatio prima*, which was printed at London in the same year. In 1589 two other lectures on the same subject were delivered. They were also printed under the titles *Commentatio secunda* and *Commentatio tertia*. The three works were revised by the author and formed the *De jure belli commentationes tres*, which in subsequent editions were entitled *De jure belli libri tres*.

A rather long list of pamphlets proves that the Oxford professor did not limit himself to teaching *ex cathedra*, but that through his literary activity he tried to spread his ideas and sought disciples outside the class-room.

That the influence of Gentili on the study of Roman law in England was beneficent is proved by fact and testimony of his contemporaries. From 1587 to 1608, the period of Alberico Gentili's professorship, the university created sixty bachelors in law and twenty-four doctors in law. Of those who pursued the courses of the master several became distinguished personages and occupied important functions. William Fulbecke, born at Lincoln in 1560, had studied at Oxford and was an advocate at London. In 1602 he composed *The*

Pandects of the Law of Nations, a book in which he mentions Alberico Gentili with praise more than once. In 1618 he published the work, *A Parallel or Conference of the Civil Law, the Canon Law and the Common Law of this Realm*. In 1620 he issued another work entitled, *Direction or Preparation to the Study of the Law*. In this latter publication he pays homage to the merit of the celebrated Oxford professor. "Through his great skill," says he, "he revived the dead body of the civil law edited by old civilists and in his learned writings he expressed the judgment of a great State with the precision of a profound philosopher and the talent of a solid jurist."

For the performance of his university functions Alberico Gentili had assistants. They were Francis James and John Budden; the latter succeeded him later.

It has been asked why the celebrated scholar did not belong to the college of the doctors in law at London. The reply is found in the very composition of the association and its manner of securing members. In order to become a fellow, it was necessary to be an advocate at the Court of Arches, that is, at the Court of the Archbishop of Canterbury. Alberico Gentili did not meet this condition. He practiced law at London to be sure, and on August 14, 1600, was admitted to the company of advocates of Gray's Inn. His works had given him a high reputation and he was frequently consulted. When peace was concluded between England and Spain it happened that, since the war between Spain and the United Provinces still continued, the English courts were frequently confronted with questions relative to the vessels captured by Dutch privateers. In 1605 the ambassador of Spain, Don Pedro de Zúñiga, with the consent of King James I, named Alberico Gentili advocate of the embassy. We should note in this connection that before the court of admiralty cases were often settled between the public ministers of the Powers to which the captor and the captured belonged.

In the important collection of the manuscripts of Sir Julius Caesar, Master of the Rolls under James I, which is preserved in the British Museum, there are juridical papers edited by Alberico Gentili. Advocate of the embassy of Spain for three years, he busied himself with cases in which the principal points of maritime law in time of war were discussed. There has come down to us from this period of his life a work entitled *Hispanicae advocacionis libri duo*, which was published in 1613 at Hanau under the supervision of Scipio Gentili and dedicated to the ambassador of Spain at the Court of King James I,

Don Baltasar de Zúñiga. In the preface Scipio Gentili characterizes the work by saying that it deals with controversies that arose in England between Spaniards and subjects of other countries, especially Holland. In his last will Alberico Gentili had directed that all his works in manuscript be burned with the exception of the *Advocatio*. "All my bookes written wth my hand my said brother shall cause to be burnte bycause they are to much imperfecte, onely the Spanish bookes *ad Vocationis*, whiche yf they be not verye perfecte, he my said brother maye withowte necessary trouble mende them." Such is the text. The books which deal with his activity as advocate of the embassy of Spain are sufficiently complete to be published without requiring too many corrections. He charges his brother with their publication. These lines are printed in the register of the court of probate in which is included the English translation of the will of Alberico Gentili, dated June 14, 1608, the will itself having been written in Italian.

The first book of the *Advocatio hispanica* deals especially with maritime questions. The cases discussed there actually occurred. Alberico Gentili was the advocate of one of the parties and he kept memoranda of the cases. Sometimes he won his case and at other times he lost. These are the memoranda which Sir Julius Caesar preserved, while preserving at the same time the rejoinders of the opponents and making known occasionally the decision of the court of justice.

There are also in the British Museum the written opinions of Alberico Gentili which served for Chapters VI and the following of the first book of the *Advocatio hispanica*. They deal with a claim concerning a Portuguese vessel captured by a Dutch privateer. One passage is characteristic and shows Alberico Gentili as being in advance of his time. He attacks vigorously the shameful right of letters of marque. In his harsh, rough and choppy style he denounces this barbarous custom:

Dico enim esse odiosissimum hoc jus literarum markae, quod merito divinis-
simus noster rex abominatur: per quo geritur latrocinium verius quam bellum:
contra inermes et innoxios mercatores et acies ab aciebus longe positos.

The brief of Alberico Gentili in the case of the Portuguese vessel captured by the Dutch privateer was successful before the commission of five jurists charged with the examination. There is another important case in which Alberico Gentili was counsellor and which has been reported in the *Advocatio hispanica*. In the British Museum is the memorandum of the Paduan professor, Marco Antonio Pellegrino, a

memorandum which three of his colleagues approved. It deals with a Venetian vessel captured in the Mediterranean by an English pirate who had taken his prize to Tunis.

A certain number of writings of Alberico Gentili deals with various questions and touches upon texts of Roman law, passages of the Holy Scriptures, principles of political rights, such as the absolute power of kings and the union of the kingdoms of England and Scotland. A complete enumeration and an analysis of these works are superfluous. We shall have occasion to indicate their tendency in speaking of freedom of subject matter. It is sufficient for us to state at this point that although these productions are sometimes hastily written, they show great studiousness and an industry worthy of praise. The learned publicist died at the age of fifty-eight. He was buried in the cemetery of the Church of St. Helena, near the place where his father lay.

V

Of the works of Alberico Gentili the principal one is the treatise, *De jure belli libri tres*. Grotius mentions it in his work on the law of war and peace. In his preface he speaks of two writers who before him have studied the subject, invoking history and reducing to certain definitions and to certain general maxims the examples that they have collected. He names "Balthazar Ayala, the author of the treatise, *De jure et officiis bellicis et disciplina militari*, and Alberico Gentili." "Especially the latter," he adds, "from whose work I confess I have derived assistance, as I believe others will profit too. For the rest I leave it to the readers to examine that which can be criticized in this author for style and for method and for the manner of distinguishing the questions and various kinds of law. I limit myself to the remark that when he decides some controversial point he is often guided either by a small number of examples which are not always to be followed, or by the beliefs of modern jurists taken from their written opinions, some of which have been accommodated to the interest of clients, rather than based upon invariable rules of justice and righteousness. Ayala has said nothing about the reasons why a war is called just or unjust. Gentili has distinguished certain general heads which he has treated in a body, according to his own taste. But he has not touched upon a number of excellent and curious questions which rest upon very common cases. As for myself I have tried to omit nothing of this kind and in indicating the sources of my decisions I have given prin-

ciples which it will be easy to follow in order to decide questions that I may have forgotten."

It seems to be an established fact that Grotius was already engaged in November, 1622, with the great work which was printed in March, 1625. The questions of the law of nations had occupied him for a long time. At the end of 1604 and during the first months of 1605 he had composed *De jure praedae commentarius*, devoted to problems of maritime war. In 1609 he detached from the manuscript of this work a single chapter which became the *Mare liberum*. Thereupon he was involved in negotiations relative to fisheries and it may be said that a number of diplomatic questions occupied his attention. One of his letters tells us that in his prison at Laevestein he read the work of Alberico Gentili, *De jure belli* and the same author's *Advocatio hispanica*. He used the former work in the composition of his *De jure praedae commentarius*.

Alberico Gentili is fond of citing historical facts. In his *De jure belli* he quotes many an example which presented itself in the field of contemporary or recent politics. Sclopis de Salerano rightly calls the works of Alberico Gentili a juridical commentary upon the events of the sixteenth century and says that all the great controversies between Charles V and Francis I, between the Netherlands and Spain, between Italy and her oppressors were studied by him from the point of view of public law.

VI

Alberico Gentili's stay in England occurred in a period rich in events. Grandeur and glory lay close at hand. The intellectual and moral force of the nation was asserting itself. A colonizing rôle was being initiated which was destined to be the greatest that a people had ever played in history.

In 1580 the total population of the kingdom was 4,600,000. The population of Europe must have been about 60,000,000. In 1605 it was given to Alberico Gentili to deliver an address on the union of England and Scotland (*De unione Angliae et Scotiae discursus*). Soon the disappearance of the barriers between the two countries became an accomplished fact. To be sure it was not the absorption of one of the contracting parties by the other, yet the formation of Great Britain was not without importance.

On the European continent England at the end of the sixteenth century and at the beginning of the seventeenth century could act with decision. It was a powerful force in weakening the Spanish mon-

archy, which seemed to be on the point of assuring the triumph of despotism and fanaticism. Need it be recalled that under the reign of Elizabeth the work of expansion of the mother country beyond the ocean was begun? The Queen has been reproached for having neglected to assist in their efforts the daring sailors such as Hawkins, Frobisher, and Drake, but it should not be forgotten that during the last years of the sixteenth century the important colonial enterprises in North America took place. In 1584 a lieutenant of Sir Walter Raleigh discovered Wingandacoa which received the name of Virginia from the Queen herself. It is true that the first settlement of any duration was not made in Virginia until the reign of King James I. In 1607 a group of about one hundred men settled on the banks of an island situated in the estuary of the James river. The town was called Jamestown.

The charter authorizing the formation of two colonies which were to become Virginia and New England was granted on April 10, 1606. That is the beginning of the reign of English law in the New World. The constitutional traditions of the mother country were accepted and the first General Assembly took place in Virginia in Jamestown in 1619.

One of the great acts of Queen Elizabeth is undoubtedly the incorporation of the East India Company. In 1599 the "merchant adventurers" of London petitioned for a charter. They had drawn up in support of their petition a memorandum which replied to the objection resulting from the rights of the Portuguese and Spanish, gave a list of the possessions of these two groups in the Orient and a long list of realms not subject to their sovereignty or to the sovereignty of any other people, realms which awaited only the arrival of merchants. The charter was granted on December 31, 1600.

What can be said of the literary and intellectual order and of the great men whom Alberico Gentili had occasion to know and to honor, among them Edmund Spenser, who has been compared to Ludovico Ariosto, and Sir Philip Sidney, whom we have already mentioned? At the same time there lived the most powerful dramatist of modern times, William Shakespeare. How alluring is this epoch! "The English genius," says Elisée Reclus, "was very susceptible to the classical influences of the Renaissance and of the modern literature which had blossomed forth in the other countries of Europe, particularly in Italy and in Spain. At the same time it shared the general spirit of

adventure, giving itself up to the impetus of an imagination which was never surpassed in scope or in daring."

Born in 1561 Francis Bacon died in 1626. The major part of his life was spent in London in the juridical world and, it may be said, in the sphere of action in which Alberico Gentili was engaged.

In science in general Francis Bacon is the protagonist of induction and the resolute partisan of experiment. In the science of law he notes that the authors who have written on this subject have treated it as philosophers or as jurists. The philosophers he reproaches for emphasizing matters too far removed from practice; the jurists bound to their text he reproaches for not having sufficiently used their freedom of judgment and for having seemed to speak from the recesses of a prison. The knowledge of law belongs to the statesman, who should decide in accordance with the principles and the precepts of natural justice or politics. He preaches the examination of the *leges legum*, of the laws which alone make it possible to decide what is good or bad in individual legislative provisions.

In 1575 Francis Bacon was sent to the University of Cambridge. Four years later he was attached to the person of Sir Amyas Paulet, ambassador of England at Paris. Jean Hotman, as we have seen, became the tutor of the son of this diplomat.

Nicholas Bacon, the father of Francis Bacon, died in 1579. His son returned to London and became advocate at Gray's Inn.

The first political and juridical writings of Francis Bacon are of 1595. The profession of advocate also absorbed a part of his activity. Moreover, he became a member of the Chamber of Communes. In 1608 he entered the juridical career. People came to him; soon he was named Lord Chancellor and received in 1618 the title of Baron of Verulam and in 1621 Viscount of St. Albans.

Misfortune overtook him. Accused of corruption and prevarication, he was condemned in 1624 to a fine of forty thousand pounds sterling, to imprisonment in the Tower of London as long as it pleased the king, and to the forfeiture of his public functions. King James finally pardoned him. For almost five years the great man devoted himself to the editing of highly important works, and on April 9, 1626, he died in the arms of Sir Julius Caesar who had married his niece and with whom he had passed the last years of his life.

The fall of the illustrious thinker became the subject of numerous commentaries. Bitter reproaches were uttered and attempts were made to defend him. Favors had been sold by the chancellery and he

himself had accepted gifts. Attention was called to the fact that his decrees were not attacked. "His favorites accepted presents," writes John Aubrey, "but he always rendered judgment in accordance with justice and righteousness."

Is it not possible to set off this regrettable phenomenon of cruel persecution which raged in the time of which we speak? The wrongs were great, both on the side of the Roman Church and on the side of the Protestant governments. How many acts of violence, secret plots, conspiracies, which everywhere were bound to have as a consequence a recrudescence in the repressive measures! In England which revealed so many happy signs of progress, cruel laws were in force against the Catholics and the dissenters. The oath of allegiance was imposed upon them. It proclaimed James I the legitimate ruler, condemned the papal claims and gave the signal for an oppressive régime under which even in books and purely theoretical works sentiments of hate and anger were developed. From this point of view it is interesting to set forth some of the theories maintained by Alberico Gentili in his writings.

In the conception of the Law of Nations he pronounces himself in favor of the broad thesis; he includes in it the autonomous political communities without excluding "the heretics and infidels." He admits that war is a legitimate means for deciding conflicts between governments. His definition rejecting private war and demanding compliance with law, *publicorum armorum justa contentio*, is known.

The first book of the *De jure belli*, that is to say, almost one fourth of the work, is devoted to the study of the causes of war which are either human or natural or mixed. The human causes appear when law is violated. Such cases are numerous. "With regard to the natural causes," says the author, "there is no war demanded by nature; this is only the case when nature is followed, so to speak, when it is taken as a guide, and it is otherwise when war is undertaken because the adversary contests or denies the use of a thing which is granted by its nature. The first natural causes are necessary defense, useful defense and defense worthy of commendation. Necessary defense does not need to be discussed; it is useful defense when one believes that one is attacked; defense worthy of commendation is an action to defend and protect others. The second class of natural causes is presented when war is undertaken for the purpose of obtaining what is granted by nature, provided that men desire this thing, as for example innocent passage, navigation and commerce." Alberico

Gentili does not admit that religion is a cause for war. "Religion," he writes, "is not, properly speaking, a right of men toward God. Religion addresses itself to God. It is a divine right, that is to say, a right existing between God and man; it is not a human right, that is, a right between man and man." It is true that in other passages he admits that there is an irreconcilable war between the Christians and Turks. Strictly speaking, we can not read in his language the statement of a fact as much as the exposition of a theory. The Christians wage a just war against the Turks because the latter act as enemies. They are a constant menace and perfidiously take what belongs to others. But the idea of engaging in hostilities against those who observe the peace can not be countenanced. He asks also whether it is permissible to conclude treaties between persons of various religions. "The question," he says, "belongs in part to the realm of theology, but in theology intercourse between Christian States and infidel States is permissible. What is forbidden is an alliance between believers and unbelievers for the object of making war against unbelievers, and *a fortiori* the alliance for the object of making war against Christians." Alberico Gentili invokes an argument to justify war against the Turks. He places them on the same plane as the Spaniards. He accuses the two nations of planning universal domination.

In the treatise, *De legationibus* the author asks whether excommunicated persons have the right of legation. The case was presented by the Venetians excommunicated by Pope Julius II. In spite of their excommunication they had continued their diplomatic relations with the Christian governments. Other examples could be mentioned in favor of an affirmative solution, for did not Catholic princes maintain relations with Protestant princes? Alberico Gentili teaches that it is permissible to maintain relations with the Turks. "Religion," he says, "is an affair between God and man, not between man and man; war should not be waged because of religion; others have proved it and I consider the proposition as established." He concludes by proclaiming that the right of embassy remains intact in spite of all religious differences.

Alberico Gentili is in favor of the absolute right of kings. He does not even admit that they are subject to any authority whatsoever with regard to religion and he asks whether the King of France and the King of Spain are really supreme princes, since they recognize the power of the Pope. There is nothing astonishing in the theory which the learned master of Oxford held in respect to canonic law. He

speaks of it angrily and deals with it as a product of the unenlightened ages and as the work of the anti-Christ. He consigns it to the flames. A passage in his work *De nuptiis* is significant: "*Flammis*," he cries, "*flammis libros spurcissimos barbarorum, non solum impiissimos antechristi. Flammis, omnes flammis!*" (Into the fire with the detestable books of the barbarians; into the fire with the impious books of the anti-Christ!)"

Pierre Bayle observes that in some of his works Alberico Gentili is not at all fond of the hypotheses of the Protestants. He mentions the disagreement with regard to the canonic character of the first Book of the Maccabees. He cites his opinion on the indissolubility of marriage and that adultery may be a just reason for separation from a woman, without giving the right of remarriage. He recalls the discussion on the Latin of the Vulgate. Alberico Gentili also displeased the fanatical Protestants and they went so far as to hurl the epithet of *Italus atheus*, "the Italian atheist," at him.

We deem it superfluous to dwell again upon the importance of the rôle played by Alberico Gentili in the literary history of the Law of Nations. As a general rule the authors have paid homage to the old jurist. His works have been read and modified. In 1878 Thomas Erskine Holland published a magnificent edition of the *De jure belli libri tres*. The Carnegie Endowment has decided to publish in its collection of Classics of International Law the *De legationibus libri tres* and the *Hispanicae advocacionis libri duo*. That is proof that Alberico Gentili has not yet ceased to be an object of study for those who love the Law of Nations.

To these pages devoted to the great professor of civil law at the University of Oxford, to the master of the juridical disciplines of the law of war, of the right of embassy and of maritime law in time of war, let us add a few facts about two personages whom we have had occasion to mention.

Scipio Gentili, the younger brother of Alberico, was named, as we have seen, professor in the Academy of Altdorf. That was in 1590. He held his chair for twenty-six years and died in 1616. He wrote much, but did not content himself with the composition of excellent works on law. Theoretical questions also engaged his attention, and he was endowed with a remarkable literary talent. He was summoned to the functions of counsellor of the city of Nürnberg. Bayle speaks of him in terms of praise. "His method," he writes, "of teaching everything clearly and briefly and of intermingling with the

thorns of law the flowers of *belles-lettres* (for he was a great humanist), this method, I say, was recognized not only in his instruction but also in the books which he published, and caused him to be sought by several celebrated academies. But he preferred the position which he occupied in the Academy of Altdorf to all the conditions that were held forth to him. He was offered a professorship in universities in France, at Heidelberg and at Leyden, and a fact that is quite remarkable for its uniqueness is that Pope Clement VIII promised him liberty of conscience if he would accept a professorship at Bologna."

Jean Hotman, Sieur de Villiers Saint-Paul, after having held the position of secretary to the Earl of Leicester, served the interests of the King of Navarre, who in 1593 became Henry IV of France. He was assessor to the state council (*maître des requêtes*) and was engaged in a number of negotiations, especially with the Protestant princes of Germany. He lived at Düsseldorf and at Wesel. In 1614 this latter city was taken by the Spaniards. Hotman tells us that in the catastrophe he lost "his furniture, his clothes and his papers." Later he lived in Paris, continuing in the diplomatic service of France for diplomatic negotiations with the Protestant princes of Germany. Like Grotius he cherished the dream of a reconciliation of the Christian churches. He knew the illustrious Netherlander well and was closely associated with him in the French capital. Jean Hotman died on January 26, 1636.

ERNEST NYS.

Written between July 21 and August 9, 1920.

[*The Title-Page of the Edition of 1594*]

THREE BOOKS
ON EMBASSIES

BY

ALBERICO GENTILI,
ILLUSTRIOUS JURISCONSULT

*Useful and very necessary for all students
of all classes, but especially in
the reading of Civil Law*



HANAU
AT THE PRESS OF WILHELM ANTON
1594

*To the Illustrious Philip Sidney,
Alberico Gentili, heartiest greeting.*

I have long been keenly desirous, Sidney, of showing clearly and unmistakably with what great attachment and respect I regard you. My failure to do so hitherto has been due to the fact that everything I have been able to think of for the purpose during the five years I have been in England, has seemed to me far too meager to serve as an adequate expression of so strong a feeling. It is, of course, a matter of common experience that we continually fail to satisfy ourselves in undertakings to which we devote ourselves with special zeal. When I first landed in England, I had, by reason of my circumstances, absolutely no thought of cultivating the favor of members of the nobility, or of attempting to attract their attention. But the praise of your virtues, which were proclaimed with striking frequency and persistency, caused me also to take heed; and I resolved to seek that light which [iv] perchance I had avoided more than I should have done, and to hasten to you. You treated me, not only in correspondence but also in frequent personal interviews, with such consideration that I am now of the opinion that nothing more opportune ever reached my ears than this fame of yours, insomuch as it resulted in my desiring and, by reason of your kindness, in my being able to obtain acquaintance and intimacy with you. For what can be more welcome than the good-will of one who, of noble birth and related to the most famous men of the day, is also through his own virtues of such distinction that the notable qualities of many, like several kinds of fruit on one and the same tree, are found ingrafted and strikingly developed in him? Granted that your father Henry, by virtue of the offices of Viceroy of Ireland and Prefect of Wales, by his membership in the exalted Order of the Garter, by his great dignity as Councilor and his other honors, is justly deemed a personage of signal prestige; yet I and others will continue to believe that his strongest title to fame lies in his having a son with such character and force as yours. Are we to believe that your father-in-law, your second father as it were, the illustrious and saintly Walsingham, feels more gratification in his rank as Chief Secretary, or in any other high administrative office, than in having, for the hope of his house, married his only daughter, a girl of rare charm, to you

chosen from the whole nobility? Shall I speak of your brothers? They, having started on a career of great renown, hold prosperously to it, with you leading and lighting them on the way. Why should I [v] mention the illustrious Earl of Pembroke, your noble sister's noble husband? His connection with the Sidneys is a source of the utmost gratification to him; your name is ever upon his lips and upon you, with incredible delight, he keeps his eyes fixed. Your uncles, the illustrious Earls of Warwick and Leicester, concentrate their regard on you with such intensity that, oblivious of the other advantages with which they have been honored and blessed above all men, they seem to believe that all their interests are bound up in you alone. What need of going into details? Why describe the exalted dignities to which Warwick has attained, and his high military commands? Why enumerate all the honors of Leicester? The latter, on account of his preeminent wisdom, transcendent love of country, exceptional loyalty to his sovereign, and notable piety, is looked up to, loved, revered, and venerated by all good men. During the whole period in which he has been so closely associated with her Serene Majesty the Queen, he has demonstrated his great virtues by proofs of such quality and efficacy that only complete subjection to an evil spirit could prevent my singing his praises. We grant (for it is only the truth) that the genius and intellect of Elizabeth is mighty—I almost might say divine—and that with strict adherence to the truth it can be said of her: "You kings have the spirit of a woman, but this queen that of a man." Nevertheless, since there never has been a sovereign, nor ever can be one, who is able to rule an empire without assistants, it is inevitable that no small part of the administration be consigned to them. Accordingly, if England to-day has aught that is good (and she has peace, religious convictions, [vi] and the other blessings that attend these, nor are there any surer proofs of a virtuous government), it is necessary that we credit this to the counsels of your uncle to the full extent of his participation in the administration. Nor can we, without committing a great offense, fail to greet with all acclaim this excellent man, whom Elizabeth (and when we speak of Elizabeth we speak of piety and virtue themselves) has chosen to be her councilor, and after protracted tests has approved. Assuredly all men, all who are loyal to the best of sovereigns will applaud Leicester, and give him the support of their best wishes. The policies of councilors are so closely connected with the policy of the sovereign that the Roman emperors held that their councilors were

part of their own person, and asserted that any injury done to them was violence done to themselves. If certain unscrupulous persons of our day had taken this view, or realized the baseness of a slanderous tongue, which has been detested by the legislators and upright men of all times, they never would have begun their infamous howling against a good man and true, but would have kept their foul mouths closed. Yet even these men in their madness (though otherwise disqualified by law from giving evidence) bear testimony to the virtues of Leicester quite as effectively as the good citizens, who one and all have the habit of never mentioning his distinguished name without preliminary compliments or striking commendations. In a word, just as praise by the good is distinctly creditable, so abuse by the vicious is, in my opinion, praise of the highest order, for approval by the base is a disgrace [vii] to the one approved and casts an ugly slur upon him. To be commended by honorable men points to a close bond of union with them, while to be accused by the wicked indicates dissimilarity and a wide difference between them and ourselves. May you prosper in your magnanimity, excellent Earl! Both your other virtues and your services to your country, your devotion to your sovereign, your piety, the words of good men and the rage of the wicked attest your fame, and will transmit it with the highest praise to all posterity. I can not be at enmity with you (I speak of myself as an Englishman by reason of the affection which binds me to England more and more each day) without laying myself open to the charge of having made an infamous attack, first on the country which prospers chiefly, after God and the Sovereign, through the endless labor of its councilors, and especially yours, Leicester; secondly, an attack on the Sovereign whose might yields to nothing on which the sun shines, and who has given expression to a most favorable opinion of your quality; and finally, on the religion so scrupulously safeguarded by you. But I shall speak elsewhere and at far greater length about Leicester. I return now to you, Sidney. The dazzling brilliancy of your family connections, which others would scarcely have been able to bear or survive, you not only live up to, but by your notable qualities increase, adding greater power and more and more lustre. About those qualities, however, I must be silent lest I detract from them through fault of genius. And yet, so far as I have been able in writing, I have endeavored to reproduce them throughout this whole work. For in it I have made a persistent and determined effort to delineate the perfect ambassador, that is, a man of the high-

- [viii] est personal distinction, on your model. How fortunate I am if I have to any extent realized this wish! But just as it would be impossible for a painter who was only a copyist, no matter how skillfully he might wield his brush, to reproduce to the life and in full detail the work of a master artist, so I am not inclined to believe that the manner and style of my description of your brilliant qualities have been such as to exclude the possibility of my having omitted a large number of them, and barely outlined many others; nor do I fail to recognize that in every case my delineation fails to do justice to the original. I am in the highest degree conscious of the feebleness of my efforts, and it is this consciousness (to refer now to the subject I began with) that during this long period has prevented my dedicating to you any of my literary works—my sole means of satisfying my desire to pay you a compliment. For after I associated my first publications with the name of your distinguished uncle, to whom as a kind of tutelary spirit they were due, I had absolutely nothing on hand which I considered worthy of you. I did not wish to offer any of my ruder efforts, but something which had a touch of loftier and purer erudition. How difficult—I might say impossible—it was for me to attain this, you yourself can well testify, knowing, as I am sure you do, that I have devoted myself exclusively to the studies in which men like Bartolus and Baldus are steeped, and with which in turn they imbue their students, and are accustomed to train them with the utmost thoroughness. As a matter of fact I never should have gratified this desire, had not the illustrious Leicester's visit to Oxford furnished me with an opportunity. Since he desired to hear me as well as the English
- [ix] scholars (as you who were present well remember), it behooved me, with such an audience, to disregard ordinary subjects, and even if it were contrary to my bent to discuss something which would be suitable to the occasion. So I treated the subject of the Ambassador, which, as you know, you had previously induced me to investigate, and had aided me in threshing out with every variety of Socratic device. Otherwise, could I have thought of or discussed anything of this kind, especially when, as you know, I was obliged to speak *ex tempore*? My treatment seemed to give satisfaction, and after having revised it and at the advice and instigation of the learned Doctor John James enriched and elaborated it, I arrived at the conclusion that it was a suitable subject for me to expound in full detail, and furthermore, that its exposition would enable me to satisfy that old longing of mine.

It was a difficult task for me, for I was wholly without those aids which so important a subject needed, and their acquirement was greatly hindered by the character of my special studies, which could not be relinquished for any length of time. My ardor, however, overcame all these obstacles. In carrying out the undertaking I drew on my former studies so far as my memory could help me, and occupied my leisure hours, or rather hours taken from my usual reading, in further investigations. I made such rapid progress that I have finished the work in this short time, for you know that scarcely six months have passed. Now I bring and dedicate it to you as a mark of that regard which I have mentioned; and you should receive it in this spirit, even if you do not consider it in all respects worthy of a place among the [x] many other works dedicated to you. For since it was desired, prepared, elaborated, and labored over for you, and so far as lay within the power of an inexperienced craftsman, modeled upon you, it can not be dedicated to anyone but you. Moreover, I am sure that you and that wise Laelius of yours, Edward Dyer, will speed my effort, and that it will win a place not only with others but also with yourselves, whose approval I chiefly desire. Farewell.

OXFORD, *July 21.*

RICHARD EEDES TO ALBERICO GENTILI ¹

As Cicero the orator portrayed,
And as the Stagirite the happy man,
As Plato once described an ideal state
Where communism reigned, and Zeuxis gave
Us Helen, and Apelles did depict
Fair Venus, and the throng of gods gave forth
Pandora,—O do thou, who thus wouldst limn
Thine own ideal ambassador, combine
The better traits of many men in one;
For surely whom thou giv'st us is the best,
Blending the noblest gifts of many men.

BROTHER SCIPIO TO THE SAME

As once unskilled and struck by stolid scythe
Silenus stood agape, while reeds were mute,
The while the beech revealed the hidden cave
And showed full wondrous sights to eyes of men,
So thou whose skill and brain were all pent up
Within the rigid cortex of the law,
Dost openly disclose to minds of men
Thy startling genius and thy boundless wealth.

¹ [In the original these letters are composed in elegiac verse.]

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¹ [The numbers in brackets refer to pages of this translation.]

THE FIRST BOOK
ON
EMBASSIES
BY
ALBERICO GENTILI
Illustrious Jurisconsult

1

CHAPTER I

Application of the Term "Legate"

According to Varro, Cicero, and other authorities, the term "legate" is generally applied either to one who represents or assumes the function of some high commander or magistrate or to one who is sent to state his sovereign's wishes in regard to some question. To the former class belong those who serve as military legates (as Cicero puts it in the *Pro Balbo*) on the staff of commanders-in-chief and generals; and those who render a similar confidential service (as Caesar calls it) to magistrates in the administration of their office, like the legates of proconsuls, and others of whom there is frequent mention in historical works as well as in civil law. The title is also applied to many magistrates with duties of their own, like the papal legate who, as Guicciardini notes in his fourteenth book, serves in the army and has charge of the Pope's military operations. To the papal court also belong the legates extraordinary, ordinary, and ex officio, who are mentioned in more than one passage of pontifical law. In ancient times there was a magistrate called the legate of Caesar or of the Emperor. He was governor of a province, as we are informed by the jurist Venuleius in the twelfth law of the title of the Digest on accusations. It was by this designation, as Dio tells us in his fifty-third book, that the governors whom the emperors sent to the provinces which they had taken under their own charge, were distinguished from the governors whom the people used to send to the provinces under their control. Of this type also is the legate for taking the census, whom Hermogenianus mentioned in the first book of the *Epitomes*, and Tacitus in the first book of his *Annals*. Finally, there were those who on the occasion of some success were dispatched to military commanders both for administrative purposes and in order to honor the victory. Legates of this kind were sent to the elder Africanus after the conquest of the Carthaginians, to Quinctius on the defeat of Philip, to Lucius Scipio after the victory over Antiochus, to Aemilius after the discomfiture and capture of Perseus, and to Anicius when Gentius was vanquished. We know of other legates dispatched on similar occasions, but specific mention of them is neither worth while nor pertinent to our present investigation, for this has to

Varro, Ling. Lat. 4
Cic. Verr. 4

Civ. 2

C. 7. 62. 1 and 7
D. 1. 18. 20
D. 50. 41. 1

Livy 30, 33, 37, 45

do with the other type of legate, who is in no sense a magistrate. Enough of the legate who is a magistrate, or the deputy of a magistrate. We have made these remarks so that we shall not, embarrassed by ambiguity in the term, presently find ourselves in difficulty at some point where difficulty is least admissible.

CHAPTER II

Numerous Designations of the Type of Legate of Whom We Are About to Speak, with a Definition

The legate whom it is our purpose to discuss is sometimes designated by the broader titles of spokesman or orator, intérpreter and messenger. So far as the word spokesman is concerned, the usage is confirmed by many passages. Virgil says [in the *Aeneid*]: "Then the son of Anchises orders a hundred spokesmen, selected from all classes, to approach the mighty walls of the King"; and in Book VII: "And now spokesmen arrived from the Latin city." Livy also has employed this term frequently, Plautus has it in the prologue of the *Amphitryo*, and the usage is common. Nor is any obscurity involved in our remark that the title of spokesman or orator is broader than ambassador. The former is used of one who can discuss all subjects copiously and from different points of view, while the latter is applicable only to those who administer public affairs. Moreover, they differ in this respect, that the title of orator, in the strict sense of the term, indicates a personal accomplishment, while the meaning of legate connotes service for others. One may be an orator, though he is not at the time pleading cases, provided he has the faculty of pleading, but no one can be called a legate unless taking part in a legation. You should bear in mind also that legate means one who has been sent, being derived from *legare*, "to send"; while *orare* is "to speak" or "take someone's part," and orator means either a speaker or an advocate. An orator pleads his own and others' cases, among his fellow citizens and among others; but apart from a legate's individual interest in the state, there is no legate or ambassador of private affairs, nor is an ambassador sent to his fellow citizens. The term orator, therefore, is broader. And yet, judged by the standard of common usage, it may sometimes seem narrower, since we shall find certain ambassadors who either say nothing at all, or whose speech is a mere accompaniment of their action. These we can scarcely call orators according to the accepted form of speech. Now Plato informs us that oratory is one of those arts in which perfection is attained through speaking and which need either no action whatever or very little. It should be conceded, then, that the function of the ambassador, since it can be performed either by action alone, or by action with

3

Aen. 7

Livy 2, 5, 6, 24, 25

Cic. De orat. 1

4

Gorgias

words, has a certain advantage over that of the orator. It is by these three differences that all arts are distinguished. Further, I have never been convinced of the soundness of Guillaume Budé's opinion that the term orator signifies an ambassador who comes to submit a petition. The origin of the word is against this theory, since we are informed by the grammarians that *orare* was used by the ancients with the meaning of "take someone's case"; and ambassadors were called orators, because they took the case of the state when so instructed. Besides, if Budé is right, why does not orator have the same meaning in every instance? The word is used not only of one whose oration consists of petitions but also of any other speaker, whether he blame, accuse, or threaten. Nor can I find any examples in the authors to support Budé's position. But enough of this subject, and enough of the orator. We know that an ambassador is also called an interpreter. For the poet Virgil in the fourth book of the *Aeneid*, speaking of Mercury, the messenger of the gods, says: "The interpreter of the gods bears their dread commands through the air." Of this god's name, as well as of that of Iris, Plato in the *Cratylus* gives an explanation which, though strikingly relevant, I refrain from quoting. Cicero also applies the term interpreter to those who carry instructions to and fro, and whom we rightly call ambassadors. Unquestionably that expression of Lucretius in the sixth book is based on a similar idea: "And the tongue, the interpreter of the mind, dripped"; and Plato's remark in the *Timaeus*, that speech is an interpreter. Yet there is a difference between interpreter and ambassador, for while one speaks of the interpreter of an author, the term ambassador is never so employed. Moreover, the former acts for one who is present, but whose language we do not understand; an ambassador only for one who is absent. Finally, that an ambassador is also called a messenger is evident from the following passage in Virgil: "Be my messenger, Idmon, and bear to the Phrygian tyrant these words of mine, unwelcome though they be." And we are aware that the use of the term interpreter by Cicero and Lucretius, to which we just referred, is repeated by Cicero, who wrote that our five senses are the messengers of the mind. Plato said that the veins, which pass from the tongue to the seat of feeling, are the messengers of taste. Speech also, he said, was a messenger. Further, the words of the fecial priest are well known: "King, do you appoint me the royal messenger of the Roman people?" Cicero in his speech against Vatinius calls ambassadors messengers and inter-

Budé on D. 48. 6

Festus, s. v. adorare
and orare

Manutius on Ep. ad
Brutum 9

5

Tusc. 1

Timaeus

preters; and Livy in his twenty-first book applies the term messengers to those whom a short time before he had called spokesmen. Homer also and others in referring to Mercury, the interpreter of the gods, use the term messenger with equal freedom. Nevertheless that there is a difference between messenger and ambassador is shown by Cicero, and clearly by Livy, when he writes of the approach of the Aequians as follows: "If they should think that not only the messengers but also the ambassadors of the Tusculans had reported a groundless rumor and vain tidings"; in the same passage: "But if both messengers and ambassadors should be believed," etc.; and in another place, speaking of the Carthaginians: "They repeatedly summon Hasdrubal and Syphax by letters, by messengers, and finally by ambassadors." What, then, is the nature of the difference? Assuredly it does not lie in this, that those sent by the state are called ambassadors, but those dispatched on private business, messengers. We have seen men sent by the state called messengers not only in the passages of Livy just cited, but also in other parts of his writings, as well as in Cicero, Sallust, and elsewhere. So we should not make this the basis of the definition we are framing. The basis should be the method of sending. And so an ambassador is one who has been sent not only by the state, but also in the name of the state, and as the representative of the state. "He was," as Cicero says of a certain ambassador in the *Eighth Philippic*, "the representative of the Senate and was invested with the authority of the state." In the first book of the *De Officiis* he writes in a similar strain of a magistrate being the representative of the state. On the basis of all these considerations and in view of the manifold types of embassies (which I shall explain subsequently), I should define the particular type of legate at present before us for discussion (and by this as you see I mean the ambassador) as *one who in the name of the state or of person still more sacred has been sent without the right of supreme command to a state or person still more sacred to say or do something in the interest of the state or sacred person by whom he has been sent*. Why explain further? Messengers between private individuals, and (as I have said) between persons in public life I exclude by my very first words. For they are not ambassadors, unless we believe that Cicero speaks with precision in his *Fourth Verrine*, where he calls one Laetilius a letter-carrier, but later an ambassador. Excluded also by the words "in the interest of the state or the sacred person" are those agents called *adlecti*. These are

Hymnus in
Mercurium

Bk. 3

Bk. 29

6

Livy 3, 41, 42, etc.
Cic. Ad fam. 15. 2
Sall. Jug.

7 persons sent on private business. At least this is the view of the grammarians, who distinguish between the words *legare* and *adlegare*, by referring the former to public and the latter to private business. This seems to be true even if the private business is that of a king, for Livy in his thirty-sixth book speaks as follows: "When the King, captivated by love of the girl, had worn her father out, first by sending his agents (*adlegando*), then by petitioning him in person, etc." For my own part, I am of the opinion that it is to agents of this kind that the passage in the tenth book of the Code *On Exemptions* refers: "In the case of ambassadors and agents (*adlecti*), etc." I have inserted in my definition the words "without the right of command" because my plan is to exclude from this discussion those legates whom I mentioned in the first chapter. That they were all invested with the right of command, either their own or someone's else, has been correctly pointed out by Manutius in his comments on the *Third Verrine*, though Lambinus and Hotman hold the opposite view. Moreover, our ambassador has no jurisdiction. And even if we take the position that an ambassador has power over his own household, that does not justify our claiming any jurisdiction for him in his capacity of ambassador. The other parts of the definition cover all the varieties of embassies with which this treatise is concerned; nor is any kind neglected. This the exposition of the embassies will itself show.

Verr. 3; Ad fam.
12. 16

CHAPTER III

The Sacred Embassy

As an example of an envoy whose mission is in the name of one more sacred than the state, or to a more sacred person, or on more sacred business, I shall cite the case of one sent by a God or to a God or on some sacred mission. Apostles, angels, and others of the kind have been sent by God. To this class belong also those whom the pagans imagined to be messengers of the gods: Iris, Ops, and Mercury. Demons, moreover, as well as birds and dreams are included in this category even by Xenophon and Plato. The latter also, in the fourth book of the *Republic*, calls the oracle of Delphi the interpreter for all mankind, because it transmitted to men the counsels of the gods. It is on this account that the philosopher retains the sacred embassy to Delphi in his state. For he says in the twelfth book of the *Laws*: "Envoys should be sent to Pythian Apollo and to Olympian Jove, as well as to Nemea and the Isthmus, that through them our state as a whole may pay to these divinities the tribute of sacrifices and games." These sacred ambassadors were dispatched to the temples of the gods to perform religious rites, consult oracles, or bring gifts. We have fairly numerous accounts of them. Heliodorus in his second and third books makes many references to them, and Plutarch has something in his *Demetrius*. Philo also mentions the sacred embassy in his work on the *Embassy to Gaius*, and gives as an example the one sent to Jerusalem to perform sacrifices and to bring first-fruits or some other gift to the temple. Of especial interest is Plutarch's story, that on one occasion the Roman Senate sent ambassadors to ask the gods what was portended to the state by the fact that a woman had pleaded a case (though it was her own) in the Forum. Many authors would include in the catalogue of sacred embassies those dispatched by or to the Pope, for divine qualities in no inconsiderable degree are ascribed to him. A hundred years ago the Spaniards regarded as inviolable an ambassador to the Pope, with whom they were at war, just as the pirates of Lipari treated those who were on a sacred mission from Rome to Delphi. Clearly the sacred embassy, in comparison with all the others, is preeminent in that it is held inviolable even among those to whom it has not been sent. For not even that pontifical legate was

8

Xenophon,
Symposium
Plato, Symposium and Epinomis

Livy 5, 22, 29, 45

Lycuīgus and
Numa

Guicciardini 12

9

on his way to the Spaniards, but having been intercepted by them during the hostilities, was set at liberty on religious grounds. Others, I know, would not have let him go. During the same period the Swiss did not show as much respect even to ambassadors sent to themselves. But enough about the sacred embassy. It is not of it, but of another type that we have undertaken to speak.

Guicciardini 14

CHAPTER IV

Classification of Embassies according to the Persons Sending Them and the Persons to Whom They Are Sent

The other type of embassy is concerned with human relations and, among other classifications that are possible, may be subdivided as follows: The embassy from an independent state or independent sovereign to one of similar rank; the embassy from a dependent state or dependent sovereign to a state or sovereign of similar rank; and the embassy between an independent and a dependent state. It is well known who the more distinguished ambassadors of the first class are, namely, the English ambassador to France and the French ambassador to England, and others of the same standing. Yet someone might say that the King of France does not always bear the title of supreme sovereign, since in religious matters he acknowledges the superiority of the Pope. The very same thing may be said of the Spanish King and of others who, though in all other respects enjoying the highest degree of independence, in matters of religion are subject to the Pope. However, I am opposed to excluding them from the class of supreme sovereigns on this ground, since we see that it does not in any way constitute a hindrance to the going and coming of embassies. For if the King of Spain or any other sovereign of the same affiliations can not have in his kingdom a resident embassy (for so we shall call it) from the Queen of England or any other monarch of her religion, that does not detract from his right as a supreme sovereign. For since this embassy, as we shall explain, is of most precarious tenure everywhere, its absence would not diminish the sovereign's prestige. In the same way if one prince is subject to another in any other matter, provided it does not affect embassies, I should still, on the basis of the argument set forth, deem him worthy of the title of independent sovereign. For example, I am told that the Republic of Genoa is subject in certain respects to the King of Spain: she is bound to allow his fleet to come to her city, and to do and submit to certain other things which are in no way consistent with the position of a sovereign state. Yet I should not deny that high rank to the Genoese Republic, least of all in the present discussion, since the situation referred to has nothing to do with em-

- bassies. Moreover, the fact that one prince is under obligation to show a respectful courtesy (as Proculus puts it) toward the dignity of another, is without prejudice. For there is no intention to create the impression that one prince is dependent, but to make it clear that a comparison of their respective ranks has shown the other to be superior. It is not even implied that one has any power over the other. The question of feudal princes may give rise to controversy, but the matter will easily be settled by an examination of the method
- 11 of their investiture. The investigation, moreover, is useful and necessary, since there is a wide difference between the rights of ambassadors of the highest class and those who are employed between dependent princes. The latter constitute my second class, the character of which is clear from what has already been said. For as soon as we become acquainted with the independent princes, we know also who are not independent. I include in my definition of ambassador those who are sent by princes and states that are subject to a greater power, both because they are everywhere called ambassadors and because they enjoy many privileges in the capacity of ambassadors. They fall, moreover, very satisfactorily under the term "of the state" which I used in my definition. The third class is of a mixed nature, and its
- D. 50. 16. 16 character also has been clearly indicated. It includes the cases in which ambassadors go from a dependent republic or dependent prince to any independent republic or independent prince, or vice versa. It should be noted, however, that the type exists also between subjects and their own prince or some other prince. Lest anyone should consider my explanation incomplete, I add examples. Of the first kind were those embassies of provincials to the Roman Senate or Emperor; also those which were sent into the city by magistrates and by others who had the right of supreme command outside the city, of which there is frequent mention in Livy and our other authorities. In our own times an example is furnished by the embassies that come from Ireland or any other province or subject state to the Queen of England. Those sent to the King of Scotland (whether this should be allowed is another question) are examples of embassies of subjects to a prince other than their own. Let these cases be reversed and examples of
- 12 the second kind will be found. A prince, if confronted by a serious situation in regard to which he desires his subject to be advised, will send ambassadors to him. In my second chapter I have told how the Carthaginians summoned Syphax and Hasdrubal. There is another

striking passage in Livy, where he speaks of the consul Flaminius' recall to Rome: "On that embassy (for it was decreed that ambassadors should be sent) Quintus Terentius and Marcus Antistius set out." The reason for this practice was that ambassadors, as representatives of the state and invested with its authority, not only communicated the wishes of the sovereign to him to whom they were sent, but also had power to command and did command. Nor should I neglect to mention here that service on an embassy sent by subjects is either imposed upon certain persons as a duty to the fatherland, or assigned to volunteers; and further that some of the embassies are gratuitous, while in other cases an allowance is provided. Of this I shall speak more fully in the next book. Now let us proceed to other classifications.

Bk. 22

Livy 9, 29, 30

CHAPTER V

The Different Kinds of Embassies according to Their Instructions

The term embassy, though strictly connoting a public function, is used both of public and private negotiations. In the first case an embassy is designated either by its generic term alone or with the addition of the word "public", while in the second it is called "free". Of the former there are three varieties: the embassy for the transaction of business, the embassy of courtesy, and the time embassy. The private commission, being free, is not restricted to anything definite. We shall discuss it in a chapter by itself. The embassy for the transaction of business is charged with peaceful negotiations as well as with war. Under the term "peaceful negotiations," we include a variety of miscellaneous activities. For example we hear of ambassadors being sent even to buy up grain. In a word every business which does not savor of warlike action may be called a peaceful negotiation. And it goes without saying that those who are sent to conclude peace itself are concerned with peaceful negotiations. Of this kind were those whom the Roman Senate sent to Africa to grant peace to Vermina, the son of Syphax, and those who, when there was wide-spread sedition in Magna Graecia, are said to have flocked everywhere to quiet it. To the ambassador who handles negotiations pertaining to war a special chapter will be given, as well as to the embassy of courtesy. By a time embassy or time ambassadors, I mean those who are sent on no specific or definite business but for a period of time sometimes prescribed, sometimes not, with the understanding that while they are on the embassy they shall be responsible for the negotiation and performance of everything which during the whole period may happen to be in the interest of the person sending them. Other ambassadors are sent on a special occasion, their orders being to return as soon as they have accomplished their mission. These time ambassadors are sufficiently well known, being ordinarily called resident ambassadors. There is also another class of embassies, for there are ambassadors who have nothing to say, but something to do. Those who bring gifts or letters or some other thing, or who come merely to present themselves on some occasion or to do something, will, if things are named in accordance with the dominant element of their nature, be called ambassadors of action. Of ambassadors bearing gifts we find instances everywhere. An example of

13

Livy 4, 30
Dion. Hal.
Antiq. Rom. 7

Livy 22

one whose mission seems to have been restricted to the delivery of a letter is seen in the case of Gaius Popilius. When King Antiochus had greeted him on his arrival and was about to shake hands, the Roman delivered to him a tablet containing a message, and bade him read it at once. After reading it, the King said that he would summon his friends and consider what action should be taken, but Popilius drew a circle around him with a rod, and ordered him to give his answer before stepping out of the circle. The King obeyed. The ambassador's mission was accomplished. If, therefore, the King had read the letter at the outset and had obeyed the Senate, the ambassador's function would have been fully executed by the delivery of the tablet. This was an embassy of action. Herodotus tells us that an ambassador was sent by the King of the Scythians to Darius with a bird, a mouse, a frog, and some arrows, and was instructed merely to deliver these and to do nothing else. Why should I mention the numerous instances in our own times of ambassadors who are dispatched for the sole purpose of making some ceremony more impressive by their presence? So far as ancient history is concerned, let me draw your attention to the games which Livy relates were celebrated at Amphipolis by Aemilius after his victory over Perseus, and which were honored by embassies of this kind. Livy also writes that the nuptials of this same Perseus and those of King Prusias were celebrated amidst the congratulations and contributions of innumerable embassies and, so to speak, under the auspices of the greatest nations. These embassies, in the part they play after offering their congratulations, undoubtedly belong to the class which I have instituted here. But that which Budé in the first book of his *De asse* calls a nuptial embassy, and which is said to be executed by one who makes a marriage contract on behalf of an absent prince, does not fall under this category, for in this case the whole business is transacted by words. We can also imagine an action-embassy (am I suggesting a better name?) by inverting the well-known acts of Tarquinius and Thrasybulus. For just as they lopped off the tall poppies and ears of grain without saying a word in answer to the messengers, so we can imagine messengers acting in the same way. Moreover, that the ambassador of war is sometimes of this class will be proved by what we shall say in the next chapter, and later in another chapter which will deal with the herald. This completes the explanation of my definition, for I have furnished illustrations of the words, "to say or do something." Now let me set forth my views on the ambassador of war.

Livy 45

14

Bk. 4

Bk. 45

Bk. 42

15

Livy 1
Diog. Laert. 1,
7, 9
Aristotle, Pol. 3

CHAPTER VI

The Ambassador of War

I do not use the term ambassador of war in Cicero's sense, but mean one who has been sent without right of command in the name of a state or prince to declare war or give notice of some other hostile intention. Take as an example the envoy whom it is customary to send for the purpose of challenging someone to single combat. Of this type was Idmon, who was sent by Turnus to Aeneas; and those whom Pyrrhus, Antony, and Charles (at that time Emperor) sent to Antigonus, Augustus, and Francis, King of France, respectively. Why I should not call them ambassadors of war, I certainly do not see, for an embassy sent to arrange terms of peace is called by Cicero in the *Second Philippic* an embassy of peace, and in his speech against Vatinius he mentions both messengers of war and messengers of peace.

Plutarch
Guicciardini

- 16 Since every ambassador's function consists in carrying out his instructions, why should not one who has been ordered to declare war and who declares it, be called an ambassador of war? Whatever there may be in the claim that peace is the ultimate aim of the belligerent prince and of war itself, I maintain that it is not the aim of the ambassador who declares war. Otherwise it would be the purpose of every instrument of war; the soldier would be a man of peace; even war itself would be peace. If we judge and name things not from what they are, but from the purpose for which they are intended, we open the door to a confusion of means and ends. This certainly would not
- Rep. 1 have been tolerated by Plato, who limits the duty of the shepherd to the fattening of the sheep, and refutes Thrasyarchus, who was in favor of including in it the benefit of the shepherd and the interest of the owner. Further, it does not follow that there are no ambassadors of war because ambassadors are forbidden to bear arms. We start wars by words also, and carry them on in that way too. The herald in Aesop was unable to establish his claim that he was not an agent of war because he did not draw a weapon. The reasoning, "the ambassador does not strike, therefore there is no embassy of war," is without substantial basis, for on that argument hostile words are not war-
- Bk. 31 like. We insist, therefore, on the type of ambassador who (as Livy says about the Athenians) wages war by means of words, the only

weapons he can use. Nor do I agree with the revered Torquato Tasso, who, opposing the view that some ambassadors are concerned with peace and some with war, maintains that every ambassador is a man of peace. The reasons he advances are those which we have rejected. He does, however, add the simile (it is drawn from the *Sisyphus* of Plato, or whoever is the author of that dialogue) of the 17 archer, and argues that just as the latter would be hopelessly futile if he aimed at no mark, but shot merely for the purpose of making an effective pose, so the ambassador who did not aim at putting an end to war and did not conduct his embassy with that in view would be wholly useless. What validity has this argument? The mission which has been intrusted to the ambassador is the mark at which he should aim. However, if his instructions have left him free, then in a sense it can be said that he who declares war is an ambassador of peace also. So perhaps we ought to construe Xenophon, who quoting *Memorabilia* 4 Socrates says somewhere that the duty of an ambassador is to change the person to whom he is accredited from a foe to a friend. Unquestionably, in the case of instructions which are definite and order the ambassador to declare war, the view of Tasso is not tenable. Am I to call an action-embassy, carrying a spear, an embassy of peace? We shall investigate that type presently, and if such an embassy is warlike, is not he who executes it an ambassador of war? I was anxious to discuss this point both in the interest of truth and in order to prevent an ambassador from taking liberties in regard to the business intrusted to him, as if he were entitled to think beyond his instructions. This (it is indeed the starting point of his theory) Tasso permits, and I shall refute it in the proper place.

CHAPTER VII

The Embassy of Courtesy

Let us now, if you please, make a careful examination of embassies of courtesy. Livy tells us that in order to wait on Scipio, with a view to doing homage to him, embassies assembled from all parts of Sicily. A resident embassy has a great many duties of this kind, and the chief reason why great sovereigns do not maintain resident embassies in the countries of minor princes is that they are under no obligation to pay the latter this kind of attention. An example of the embassy of courtesy is seen in the delegation sent by provincials to praise a man who has held office among them, the prohibition of which Tacitus records in his fifteenth book. As a courtesy also are dispatched those whose duty it is to offer congratulations or condolences, or perform other services of this kind. Tacitus speaks of an embassy being sent to tender felicitations, and elsewhere he has recorded the employment of embassies in formal expressions of gratification. Herodian mentions some embassies of this character in his second book, and in his eighth book speaks of another, of a highly ceremonial character, which was sent to the new emperors when Maximinus was killed. Procopius in the first book of his *Persian War* writes that Khosroo sent such an embassy to Justinian. A great many are mentioned in Livy, who in his forty-fifth book refers to their white garb. Orosius and Diodorus Siculus (the former in the twentieth chapter of the third book, the latter in his twelfth book) recount that on one occasion embassies of this type were sent to Alexander from every quarter of the world. The jurist Paulus has made some comments on this class of congratulatory ambassadors, nor is it difficult to find similar examples in other writers; they turn up everywhere. Ambassadors were sent to Germanicus to console him on the death of Augustus. Ambassadors were sent by the city of Ilium to Tiberius with the same dutiful intention, on the death of his sons. Ambassadors from Syracuse announced that King Hiero was so distressed by the slaughter of the consul Flaminius and his army that he could not have been more affected by any disaster to himself or his own kingdom, as has been related by Livy in his twenty-second book. Does not the embassy through which thanks are returned belong here? David on one occasion sent ambassadors to

express his gratitude for the burial of Saul. In his second book Guicciardini narrates that an embassy was sent by all the cantons of Switzerland to thank the Pope for having conferred upon them the title and insignia of defenders of the Church. But I do not wish to accumulate examples (and I have more from Livy), although in a historical treatise like this first book of mine, why should such material be criticized? It is not without value even from other points of view, since to show the prevalence of the custom is of service. For by doing this we establish firmly the right of such embassies. It is, however, of more importance to recognize that in this so-called embassy of courtesy a certain degree of compulsion is involved. It has come down to us from Polybius that Prusias reproached the Byzantines because they did not send an ambassador to him at the time of his thanksgiving to the Gods. And the Pope, please God, on one occasion was indignant at the King of Spain because on his election to the pontificate the latter, although he had manifested the customary veneration, did not send ambassadors to him. I count as homage whatever courtesy of this kind princes show the Pontiff. This is a matter for their own consideration, but I wish to emphasize the fact that just resentment results from the omission of these embassies, since this is manifestly a neglect of homage, and one to whom we fail to pay homage due is to all appearances slighted. Before concluding let me say that embassies of this class are sent not only by those who offer congratulations on the good fortune, or condolences on the misfortune, of others, but also by persons whom good or bad fortune has befallen, for these naturally desire that their friends should be kept in touch with whatever has happened to them. There are examples in Livy, and at the end of the third book of Procopius's *Gothic War*.

Bks. 28, 32, 45

Bk. 4

Guicciardini 7

20

Bk. 31.

CHAPTER VIII

The Free Embassy

One type of embassy remains of which we should give some explanation, namely, the free embassy. By this is meant the embassy of one who, although indorsed and honored by the public title of ambassador, has really gone abroad on some private business. As a matter of fact, he is like the procurator whom the jurists speak of as *in rem suam*. Moreover, these embassies used to be obtained only as an honor; their incumbents wanted them that they might have more influence in the transaction of their business, or at least more prestige in the place of their sojourn, or enjoy ease with dignity. Commissions of this kind were granted to enable one to fulfil a vow, enter upon an inheritance, or collect a debt. Plutarch in his life of the Gracchi mentions that such a commission was granted by decree to Scipio Nasica, that he might have greater safety and more prestige in Asia. He was going there because in Rome he was afraid of the fury of the populace, which was incensed against him on account of the murder of Gracchus.

Cic. Leg. agr.

Suet. Tib.

21

Tiberius, while staying at Rhodes to avoid some scandal or other, is said to have had a sort of free embassy from Augustus. The same prince, when praetor elect, is reported to have had a free embassy, for a reason which, unless my memory fails me, was similar to that for which he withdrew to Rhodes. Cicero also, through the words of Atticus, in the first book of the *De legibus*, expresses a strong desire for a commission of this kind and for retirement to a life of independence and leisure, that released from all anxieties he might have a better opportunity to devote himself to his literary work. He actually did have, as he has said in the *First Philippic*, precisely this free right of embassy, but it was while he was fleeing from the armed forces of Antony. This will suffice on the historical side, though I might mention Lentulus, Otho, and others who went abroad on free embassies. As regards the use of the term "free embassy", it seems to be derived, as Manutius writes, from the fact that those who held it had the privilege of entering and leaving the city. All other offices administered outside of the city were laid down by those entering it. Cujas informs us that the embassy is so called because it is not limited by any period of time, the ambassador being permitted to return and depart

Val. Max. 5. 3
Suet. Otho 8
Cic. Ad fam. 12

Obs. 9. 29

at any time whatsoever. But this statement seems to me to be erroneous. Nothing is more certain than that a period of one year was set for these embassies by the law which Cicero introduced. The learned Turnebus (to use Cujas' own description of him) relates that by the Julian law a period of five years was assigned. So Cujas should have said that it was formerly called a free embassy because it was not limited by any time, and because he who was appointed to one had the privilege of returning and departing whenever he liked. In that case he would have written well. Though why do I say, "would have written"? He would have copied it. For Budé wrote it, saying that this name was given to it because its members were not limited at all by time or place, and were not obliged to make a report. Moreover, whether granted on request or in accordance with the desire of the Emperor, the commission was one of complete independence. The other kind of embassy, which was imposed on one for state reasons, would properly be called obligatory, as it could not be declined. Alexander ab Alexandro, who writes that a delegation, whose members bore the title of ambassadors, sent by the Senate to adjust especially difficult situations in the provinces, was called a free embassy, adds as a reason for the term that the ambassadors accomplished their task themselves, without the aid of consul or praetor. But I confess I do not know where an embassy of this kind is so called, and, as the saying goes, I am citing an author instead of a fact. That it was customary to allow two lictors to those undertaking free embassies has been stated by the commentator on the speech *Pro Quinctio*. He also informs us that senators were obliged to get some commission of this sort, since otherwise they were not allowed to absent themselves from Rome; and in a discriminating passage at the end of the book on the Senate he points out that a private appointment of this kind was even the subject of a senatorial decree.

Leg. 3, and
Turnebus'
note

22

Dies geniales,
6. 3

Cic. Ad fam. 12
Manutius on
Ad fam. 11. 1

CHAPTER IX

Whose Function Was It among the Romans to Send and Receive Embassies?

Now that we have explained all the different kinds of embassies, it remains for us to treat the other phases of their history, beginning this new part of our work by showing who were responsible at Rome for the sending and receiving of embassies. For whether it is that the history of Rome excels all in noble precedents and is pre-eminently worthy of study, or merely that I am more familiar with it, I seem to be able to speak more intelligently about it than about that of other

23 states. The problem under consideration, however, has been solved by Polybius, who clearly refers the whole responsibility to the Senate. He says in his sixth book that if an embassy had to be sent by the Romans to conciliate or exhort someone, or to declare war, or for any other purpose, this duty devolved upon the Senate. Undoubtedly Livy's whole history proves that this was so, for in it we read of innumerable embassies, all of which were sent by the Senate. Nor does

Ling. Lat. 4 Varro differ from this view when he asserts that ambassadors were sent in the name of the Senate and the people. There is nothing to prevent their being sent in the name of the community, and yet being chosen by the Senate. Cicero expresses in the following passage of the

Bk. 3 *De legibus* his approval of the people's participation: "Persons invested with the right of supreme command, with special authority, or with ambassadorial power shall leave the city after the Senate has passed a decree, or the people so ordered." Not only did the Senate itself choose ambassadors, but sometimes it performed the same function through the agency of the consul. "The consul (so writes my

Bk. 31 Livy) was permitted by the senators to send whomsoever he thought best, selected from those who were not members of the Senate, as an

Bk. 29 ambassador to declare war against the King." And elsewhere: "The consuls were authorized to choose ten ambassadors from the Senate—those who seemed to them best fitted—and to send them with a praetor, etc." That the Senate also received ambassadors who came to

Livy 10, 33, 37, 39, 40, 45 Rome we are informed by Polybius and Livy, who relate that the ambassadors were introduced to the Senate by the consul, or in his absence by the praetor, either urban or foreign, whom the Senate had appointed. They could, however, be introduced also by a dictator or master of the horse, as others have indicated. Further, I know of

embassies having been introduced to the Senate by men who had returned from a mission to some commander on the occasion of a victory. One of the praetor's duties was the following: He consulted the senators in regard to embassies, and gave notice that if any member of the house wished to ask the ambassadors questions, he could do so. So we frequently find senators questioning ambassadors. The praetor likewise replied to embassies, but made only such answers as the Senate ordered, for it was to that body that the power of giving an authoritative response belonged. It not only had or claimed the right of intrusting this business to magistrates, but intrusted it sometimes even to a single senator. Of the custom which Dio mentions in his fifty-sixth book, that three senators replied to embassies, I find no other evidence, and it is possible that the custom was introduced at a late date. Yet subsequently, when absolutism was practiced openly, I know that the Emperors themselves replied to embassies in the Senate; and in the regal period the Kings did the same. So far as the Republic is concerned, the facts are as I have stated: in this period the consuls neither could assume this function without the orders of the Senate, nor could they even secure for the people an opportunity of hearing an embassy. This is clear from Plutarch's *Publicola*, and more than one passage in Livy's work leads us to the same conclusion. Certainly the period of the Republic merits examination on account of that admirable combination and fusion of the three parts of the body politic which it shows. To sum up, our present discussion has demonstrated that the responsibility of sending and receiving ambassadors, as well as the direction of negotiations with them, rested wholly and without limitation with the Senate. This will presently be corroborated by evidence from other sources. One fact, I think, is well known: that military commanders and magistrates who were outside the city were accustomed not only to send ambassadors but also to receive those accredited to themselves, this being done sometimes in the presence of a council, sometimes after all witnesses had been dismissed, according to the wish of the commander or magistrate. I must add that in the time of the Emperors the secretary of imperial rescripts dealt with the embassies sent by states, and that under the major-domo of the palace—a detailed explanation of these offices must be looked for elsewhere—there were interpreters of all nationalities. That there was an official in charge of these interpreters is indicated clearly enough by Procopius in the second book of his *Persian War*. Our next subject is the method of sending embassies.

Josephus, *Antiq.*
Iud. 14. 16
Livy 39
Livy 23, 30, 37
Livy 8, 37, etc.
Livy 39, 40, 43

Livy 34

Suet. *Claud.*
Livy 1

Livy 5, 7, 9, 27

25

Livy 37, 42
Plutarch, *Scipio*

CHAPTER X

Discussion of a Passage in Tacitus on the Question Whether Those Who Undertook Embassies Were Chosen by Lot

That ambassadors used to be sent when the political situation demanded it, has both been asserted by other writers and has been thoroughly established by ourselves. But I do not understand Tacitus' statement in the fourth book of his *Histories*, that a great controversy raged in the Senate whether the ambassadors who were to meet Vespasian should be elected, or chosen by lot; and that the faction which insisted that the ambassadors should be chosen by lot in accordance with ancient precedents prevailed. I am in doubt about these precedents, and it is a remarkable fact that not a single one is specifically mentioned, nor is there any other trace of such a practice in Livy's whole work, in Tacitus himself, or in the other Roman historians whom

26 it has been my fortune to peruse. We do read that magistrates obtained by lot provinces, the dedication of temples, the right of appointing a dictator, and that soldiers were sometimes drafted by lot instead of by levy, and so forth. It is a matter of record that jurisdiction, and this or that prerogative, fell by lot to one person or another, and we find the expression "fell to" used without any mention of lot. But we come across no word of the kind in connection with ambassadors, though the subject is mentioned with the greatest frequency. What of the fact attested by our authors that the most distinguished of the older men were sent, having been chosen and appointed as preeminently fit to transact the business? Why should

Phil. 9. 12 I mention Cicero, Servius, and other ambassadors selected with such nice discrimination? I cannot bring myself to believe that ambassadors were chosen by lot, even if Tacitus does make this statement. I am not raising here the question of what ought to be done, for

Rhet. 2 Aristotle in the fourth book of the *Politics* proves that ambassadors ought to be elected, not chosen by lot. Moreover, the Socratic analogy which the same writer sets forth applies with striking appropriateness to the present case: that to appoint ambassadors by lot is just the same as to choose athletes and sailors by lot, as if it were not by strength and skill, but by chance, that navigation and wrestling bouts were conducted. Even the wise Nestor is criticized by Plutarch

Turnebus on
Cic. Leg. 3
Livy 42

Appian, Hist.
Rom. 6

Livy 2, 3, 21,
29, 31, 42

because he, when selecting out of several the hero of the greatest distinction, left the matter to the fortune of the lot. Yet the Pylian sage can be defended. So far as the view we are upholding is concerned, it is amply corroborated by the speeches in Tacitus of those who opposed the faction endeavoring to force the choice by lot, and the whole trend of the argument in our third book will establish the point beyond dispute. Our discussion here is about what actually took place. What are we to think? Are we to suppose that Tacitus is speaking of the kind of embassy which could be executed by anyone at all? That magistrates who do not need experience or skill—those of the lowest rank—could be designated by lot, and that this was the custom, we know both from more than one passage in Aristotle and Plato, and from our own reasoning. But are we to conclude that the law of the lot was the usual thing in the embassies we are discussing, and that those cases which I have reported were exceptions? I say no. Shall we then believe, if we can do so without casting a slur on the historian and on the whole Senate, that Tacitus followed a report of that discussion, and never made any investigation of the truth of the matter? I refrain from deciding. Or is it better to say that the lot was resorted to in this case in the same way as we know it to have been applied in other cases that have been reported, and after those who were capable of performing the duties of an embassy had been selected, those who were actually to perform them were drawn by lot? It may possibly be maintained that in the Roman Senate there was no necessity of such a selection. Yet under the Emperors the Senate did not consist, as formerly, of persons of princely or godlike qualities, but of individuals of much lower grade, as Tacitus himself observes in the first book of the *Annals*. I can make nothing of the puzzle, nor do the learned commentators touch upon it. But I know positively that on other occasions ambassadors used to be selected from all classes, not from the Senate only; and to this the words of Virgil refer: "A hundred ambassadors selected from all classes." I will abstain from further discussion of a question to which I contribute nothing but obscurity.

Aristotle,
Politica 6,
Rhetorica ad
Alexandrum
Plato, Leges 6

Livy 9

Servius on
Aen. 7. 152

Ceremonies Connected with Embassies

We are reminded by Cicero in his speech for Roscius Amerinus that certain ceremonial observances were customary in despatching embassies. The commentators, however, assert that when the orator included all embassies, he did not make a fair statement of the case, and that his remarks are true only of those embassies which were sent to form alliances, state terms of peace, or declare war. But what was the nature of the ceremonies? I will give Livy's whole account. He says in his first book: "Alliances are formed on different terms, but all in the same way. The fecial priest asked the king: 'Do you order me, O king, to form an alliance with such and such a person?' Then he would name him with whom the alliance was to be made. On the king's giving the order, he said: 'I ask you, O king, for the sacred herb.' The king said: 'Take a clean one.' The fecial priest brought a clean tuft from the citadel, and then he asked the king these questions: 'O king, do you appoint me the royal messenger of the Roman people? And my utensils and companions?' The king answered: 'So far as this shall be without prejudice to me or the Roman people, I do.' This fecial priest made one of the others *pater patratus*. The latter was appointed for the purpose of taking, that is giving solemn sanction to, the oath, and touching his head and hair with the herb he proceeded in a long and wordy screed to formulate the alliance. Then after reading the terms aloud, he said: 'Hear, O Jupiter, and do thou (naming him with whom he was making the treaty) hear that the Roman people will not be the first to break the terms of this alliance, as set forth in the words which have been read from beginning to end from the wax tablets publicly and without evil intent, and as most justly interpreted here to-day. If the Roman people shall be the first to break them by public counsel and with evil intent, then do thou, O Jupiter, so smite that nation as I shall smite this pig to-day; and smite with the greater force in proportion as thou art more powerful and mighty.' When he had said this, he slew the pig with the flint stone." This is Livy's account. That the same ceremonies were observed in a treaty of peace is shown by him at the end of his thirtieth book. Furthermore, in the first book he has given

the following description of the rites of declaring war: "When the ambassador has reached the territory of the nation on whom war is to be declared, he veils his head and says: 'Hear, Jupiter, hear, land of (naming whatsoever nation possessed it), and let divine justice hear. I am the public messenger of the Roman people; justly and righteously as ambassador I come; let my words be believed.' He states in detail the demands, the refusal of which would inevitably result in a declaration of war. Then he calls Jove to witness: 'If I am unjust or impious in these demands, then never permit me to return to my native land.' He makes this announcement when he passes the boundary, repeats it to the first man he meets, makes it again on arriving at the gate of the city, and finally on entering the Forum, a few changes being made in the formula and in the phrasing of the oath. If the demands are not complied with on the expiration of thirty-three days (that is the regular number), he declares war in the following manner: 'Hear, O Jupiter, and thou Juno; hear, O Quirinus, and all ye gods of heaven and earth and the world below; I call you to witness that this nation is unjust and does not fulfill its lawful obligations. On these matters I shall consult the elders of my state to determine how we can obtain our rights.' Thereupon he returns to Rome for a consultation, and the king forthwith consults the senators. War having been decreed, the feacial priest carries a spear tipped with iron, or with its point hardened in fire and smeared with blood, to the boundaries of the enemy's territory, and in the presence of not less than three adult witnesses says: 'Whereas this nation has been guilty of certain deeds and offenses against the Roman people; and whereas the Roman people has ordered war with this nation (he always gives its name), and the Senate of the Roman people has voted, approved, and ordained that there should be war with this nation, therefore I and the Roman people declare and make war against this nation and these men.' After saying this, he flings the spear into their territory." So much for the ceremonies, which I think I have described to some purpose. There are, however, certain features of them that I must explain.

CHAPTER XII

The Fecial Priest and the "Pater Patratus"

That there was a college of fecial priests at Rome, and that the institution originated among the Romans is stated by Dionysius in his second book; and in this he has the support of Plutarch, who credits Numa with its organization. Yet Livy, at the end of his eighth book, Bk. 19 informs us that the Samnites also had fecial priests, and Ammianus mentions that the custom of flinging a spear was practiced by the Persians. These statements, however, can be reconciled. What we must endeavor to determine is how Livy's account of the origin of the institution can be brought into harmony with that of the authors cited above. The latter say among other things that this method of declaring war was revealed to the fecial priests by Numa. Livy gives a careful and detailed account of the institutions of Numa, but does not ascribe this practice, important as it is, to that king. On the contrary, he ascribes it specifically to Ancus. The latter, he says, determined that, since Numa in an era of peace had founded the religious institutions, the ceremonies of war should originate with himself, and that wars should be not only waged but also declared according to a certain form. And so he took over from the Aequians, a people of great antiquity, the law which the fecial priests now use. Moreover, it impresses me as a remarkable fact that Livy in his account of Numa's reign, where the material is so scanty, does not speak at all of the institution of the fecial priesthood, and it is still more noticeable that not even in any other part of his work does he write a word about Numa's connection with it. But suppose we agree with the other writers on the question and believe that it was a foundation of Numa's, for even Livy mentions fecial priests not much later under Tullus. This supposition involves a difficulty, nor do I see that we can say anything else than what is usually said about Hercules, Numa himself, and pioneers in general. The heroic deeds ascribed to Hercules were not his alone, but an aggregation of the deeds of many attributed to one, either actually more distinguished than the others, or whom the writers wished to make so. In this way, with a view to increasing his fame, religious institutions would be referred to Numa as the source and father of all religion. Founders are commonly credited with the dis-

coveries of their successors also; and I am sure that I have read that this was the case with Numa, especially where there was no clear indication of another founder. The remaining details about the name and office of the fecial priests I shall not set down. Whoever desires information about them should consult Dionysius, Plutarch, and Nonius. My explanation is confined to specific ambassadorial functions. The fecial priest bears the name of ambassador when on a mission to form an alliance, to declare war, to seek redress, to order someone to leave a place, or to surrender someone, as is clear to all who know Livy. In his account it is worthy of notice that any treaty made without the presence of two fecial priests was considered wholly invalid; war, however, could be duly declared through other agents. It is likewise noticeable that redress was sought through fecial priests on those occasions when other kinds of embassies had failed to get any satisfaction. This I gather from the fourth book of Livy, and from the fact that the sending of fecial priests was a sort of preliminary to war. Further, Nonius writes that four fecial priests usually went to seek redress. But my discussion of the fecial priest has been long. In regard to the *pater patratus* I shall say only one thing: he could not be appointed unless both father and sons were living—a detail for which I am indebted to Alciati, whose source is the *Questions* of Plutarch. He sees in those lines of Catullus, “And the land which is without thy sacred rates can not give guardians to its boundaries,” a reference under the name of “guardian” to the *pater patratus*, who was the chief of the fecial priests.

32

Livy 9, 10, 38,
31, 36

CHAPTER XIII

The Sacred Herbs and Flint Stones

De simplicium
medicamentorum
temperamentis
et facultatibus 6

We have seen that herbs were given to the fecial priests, and that these were called *sagmina*, *gramen* and *verbenae*. What were these herbs? Was there one only? Or were there several as in the case of the names? Galen mentions a certain Pamphilus whose custom it was to describe from books herbs which he had never seen; and says that a
33 crier, shouting out his announcements, often does not know, even when it is thrust before his eyes, the thing which he is describing to others in minute detail. He adds that Pamphilus would not have known the herbs which he had described, if anyone had shown them to him. I am afraid that in this discussion I am something like him. But if I impart to others as much as I can and make no pretense about the quality of the information, am I open to criticism? Pliny, in no doubtful words, has expressed the opinion that one herb is meant by these three terms, and by a fourth as well, *verbenaca* by name. But since the learned Dioscorides has established the fact that the latter is very different from the *verbena*, especially in the color of the leaves, how can we agree with Pliny? A *verbena* with a single frond and one root (which, Dioscorides states, often happens in the case of the *verbenaca*) has never been found; it always has several. The two are also, according to Dioscorides, very different in size and properties, though Pliny attributes the same efficacy to both. The *verbenaca*, therefore, should not be included in the present discussion. I am inclined to think that the source of the Latin writer's error lies in the fact that the name *peristereon* is applied by Dioscorides both to the *verbenaca* and to the sacred herb (that is the *verbena*). In regard to *gramen* and *verbena* there is greater difficulty. Livy seems to regard them as the same, and yet there is a much greater difference between *verbena* and *gramen* than between *verbena* and *verbenaca*. We can not believe that Livy uses *gramen* for *herba*, for he says, "he brought *graminis herbam* (a tuft of grass) from the citadel." I think *gramen* and *verbena* were
34 adopted from Virgil's lines: "The Rutulians and Trojans made ready the field, and in the center placed fire-pans and grassy (*gramineas*) altars to their common gods; others, in linen garb and with herbs (*verbenae*) around their temples, brought water and fire." The term *sag-*

Hist. nat. 22; 4.
56, 57

Dioscorides
4, 28

Aen. 12

men is specially applied to *herba* also, and *verbenae* according to Festus were called *sagmina* in ancient times, because they were cut in a place that was holy (*sanctus*); or because they were used for the sanctioning of treaties (*ad foedera sancienda*); or because (this is the explanation that the jurist Marcianus seems to have preferred) they made those who carried them *sancti*, that is immune and inviolable. For Pliny reports that the custom was not to cut them, but to pull them up, soil and all. So much for the herb itself. The next question is, Why did the Romans use it in these ceremonies? Is the reason to be found in the belief that they were the descendants of Aeneas, that Venus was the mother of Aeneas, that *verbenae* were a customary offering to Venus, and Venus a promoter of harmony? It seems certain that they formerly used the other tree of Venus, the myrtle, on similar occasions, if we can rely on Alexander ab Alexandro, who asserts this in the third chapter of the fifth book of his *Dies geniales*. Moreover, we have good grounds for believing him, as Pliny makes the same statement in the twenty-ninth chapter of his fifteenth book, and corroborates our reasoning. *Gramen*, the second herb, was sacred to the other parent, Mars. This idea is supported by the fact that *verbenae* were used in forming alliances and making peace, not in declaring war. That they were so used is inferred from the passage of Livy which I have quoted on the ceremony of declaring war, and I believe that the inference is sounder than the view of Pliny and Festus on the other side. Livy represents the ambassadors of war as wearing a fillet of wool around their head. Nevertheless, if our opinion is not acceptable, let us see what Pliny says. He, without indeed mentioning *verbenae*, states that *herbae* were given to increase the authority of the ambassadors, as if even such authority as can be indicated by inanimate herbs should be taken into consideration. The reason in favor of which I have expressed myself is less remote; and it is confirmed by the fact that the *verbena* (as Pliny himself testifies) is associated with many privileges. Yet the jurist seems to agree with Pliny when he says: "That is *sanctum* which is defended and protected from injury at the hands of men. Now *sanctum* is derived from *sagmina*, and *sagmina* are certain herbs which ambassadors of the Roman people are accustomed to carry to prevent anyone doing them violence." However that may be, you have heard now why ambassadors used an herb, I mean that particular kind of herb, and for what purpose. Nor is there more to say about it. As regards

Scaliger,
Art of Poetry
4. 5

D. 1. 8. 8.

Lucr. 1
Verg. Aen. 8
Hor. Carm. 1. 19

Alciati,
Emblemata 26

35

Hist. nat. 25. 9

the flint stones, I shall not cause delay by a long discussion. The purpose for which they were carried is clear from more than one passage of Livy. In making a treaty they sacrificed a hog. Virgil in his eighth book has said: "And having slain a sow, they entered into a compact." But it was, I believe, for the sake of avoiding the harsher sound that the divine poet shunned the masculine gender, not because he wished to indicate that sacred rites performed with female victims were more efficacious. Although, if we insist that the sow was the proper victim, I praise Cicero, who in the second book of his *De inventione* speaks twice of this victim in the feminine gender. Why a hog was sacrificed by the Romans can, I think, be explained from Corvinus' short work on Roman history. It does not fall within the scope of my plan to go further into the subject. I have read that a lamb was sacrificed by Hannibal on the occasion of a certain solemn promise. It remains that I touch briefly on my theory of the meaning of the term *privus*. For Livy says: "When the fecial priests were ordered to go to Africa to make a treaty, a decree of the Senate was passed at their request, to the following effect: that they should take with them *privos silices* and *privas verbenas*, etc." I interpret *privos silices* as specially cut stones and *privas verbenas* as fresh herbs. For the king said: "Take a fresh herb." Livy's words are: "He brought a fresh herb." And this interpretation agrees with the view of the grammarians, who inform us that *privus* means *proprius*, that is special, and that the word *privilegium*—which is a law applicable to an individual and not to all—is derived from it. For these stones and herbs also were not for all, but were quarried or pulled up specially and privately for an immediate purpose. What does the same author mean in another part of his work by *privae tunicae*? I think that he means clean, new tunics, just as in the *Captives* of Plautus *vasa pura* are nothing else than vessels which have not been used. In other words, this was the Roman way of fulfilling all the requirements of religion. For the same reason they took all these objects from some sacred place. The stones, according to Festus, were taken from the temple of Jupiter Feretrius. Further, Pliny writes that one of the ambassadors carried the *verbena*, and on this account was called the *verbenarius*. In conclusion, on the authority of Festus, I draw attention to the fact that in the time of the free Republic the consul or the praetor delivered these objects to the ambassadors, as the kings had formerly done. And Livy corroborates Festus. So in the

Bks. 1, 9

36

Livy 30

Gell. 10. 20

Livy 7

Livy 30

description of the formal appointment of the embassy, which we gave in the eleventh chapter, it will be necessary, in applying it to the republican period, to delete the term king and substitute that of consul or praetor.

Explanation of the Beginning of the Seventh Law of the Title of the Digest on the Equipment of Ambassadors

Lectioes
antiquae
27. 14

We have spoken of the embassies in which ceremonies were customary, and we have enlarged on those ceremonies at considerable length. Now let us examine one feature which is common to all embassies. The jurist Celsus writes that the word *supellex* (equipment) was derived from the fact that articles which would be serviceable *sub pellibus* (in tents) were formerly rented to those who were setting out on an embassy. Although I shall accept the passage as it stands, and shall not assent to the proposal of Rhodiginus, who is in favor of substituting "to their legion" for "on an embassy," I shall nevertheless pause for a brief discussion of the statement about renting. Livy in his thirtieth book informs us that it was usual for tents and military equipment to be furnished to the consul; and in his forty-second book says: "All magistrates were provided with mules, tents, and every other kind of military equipment, so that they would not commandeer anything from the allies. They had their own guest-friends, with whom they enjoyed friendly and courteous relations, and their homes at Rome were open to the guest-friends at whose houses it was their custom to stay. Ambassadors who were sent somewhere on short notice commandeered one beast of burden each in the towns through which their route lay. The allies were put to no other expenditure for Roman magistrates." So much does Livy tell us, and Cicero in the *Sixth Verrine* expresses himself to the same effect. The fact which I wish to establish from this, that their equipment used to be given to those setting out on an embassy, is also seen clearly from the following formula: "Do you appoint me your royal messenger, with my baggage and companions?" Now, "baggage" and "to pack up baggage" are military terms also and are used to designate military equipment. So Rhodiginus' substitution fades away. For if the same kind of reasoning which supports the etymology of *supellex* by substituting "to their legion," supports the traditional reading also, why do we change it? Why make a change for the worse? And tell me, is "setting out to a legion" a common phrase? It was, therefore, to those who were setting out with magisterial authority or on an em-

bassy that these things were given. Moreover, they were given (as Livy writes) to prevent any burden being put upon the allies, or as Cicero informs us, to deprive the magistrates of the opportunity of avaricious dealing, which they would have had if they themselves had been obliged to buy these things in the provinces. So far as the ambassadors are concerned, we are able to suggest another probable cause, namely, that they should seem to set out, as if no one were going to show them hospitality. For either they were going to an enemy, and no hospitable offices could be expected from him (the Romans themselves were not accustomed to show any kindness or hospitality to the ambassadors of an enemy, or of anyone else with whom they were embroiled), or they were going to friends, to whom they would be unwilling to be a burden, and upon whom they would not wish to be dependent, so that the embassy would have been put to the highly undignified shift of sojourning under the open sky or in some dirty inn, if friends had not made other provision. This same historian of ours somewhere relates what happened to a Roman senator at Praeneste. In the *Sixth Verrine* we hear Cicero's complaints. Polybius in his *Selections on Embassies* has a description of the still harder treatment which Gaius Fannius suffered in Illyria. Do we not know that the zeal of friends cools? Further, it is possible (and this would be another reason) that the Romans planned to preclude an embassy, so far as possible, from commercial relations with the natives, since an embassy is under the jurisdiction of international law. The purpose of this whole discussion is to show that I have tested Celsus' opinion thoroughly, as I said I would, and that it is more convincing with the traditional reading. The view of Coelius Rhodiginus does not square with the considerations which I have urged. So the only thing that gives me pause is the statement about renting. Would the ambassadors have to pay the expenses of the legation out of their own funds? One may venture the opinion that the word for renting (*locare*) has been used instead of the word for providing (*commodare*). There is a close connection between the two, since in each case something is delivered for use. I think that Livy in his forty-third book uses *locare* in this way: "A money gift of two thousand *asses* was sent to each ambassador, and vehicles were provided (*locata*) at public expense for Micythion (one of the ambassadors who was lame) to carry him in comfort to Brundisium." And in the preceding book: "The embassy of the King was welcomed by the Senate. They decreed that

Livy 45

Liv. 42

39

the praetor Sicinius should provide (*locaret*) a furnished house, where the King's son and his suite could stay." Further, in the jurists there are passages where *locare* (to let) and the verb *conducere* (to hire) are interchangeable. This is frequent, and even Livy is not without examples of it. There is accordingly no reason for hesitation on our part: we might speak of the equipment being hired (*conduci*) by others, the praetor or the quaestor, not by the ambassadors themselves. Or, without departing at all from the strict meaning of the word, you could adopt the view that the equipment was rented (*locatam*) to the ambassadors themselves, since they were provided with money for expenses; that is, if the Romans dealt with their representatives as the provincials and the Athenians did with theirs. But the first explanation is more satisfactory. In any case, it is not becoming for us to be sticklers over a word used casually.

CHAPTER XV

The Place and Time for Receiving Ambassadors

Since we have said that the responsibility of receiving ambassadors sent to Rome rested with the Senate, it is obvious that they were received in any place that was suitable for a meeting of the Senate. This is a well-known fact. It does not, however, fall within the scope of my treatise to explain what places were appropriate for the Senate; besides, Manutius treats the question fully in his book on the Senate. I find that certain ambassadors stood in the Comitium—the part of the Forum in front of the Curia—waiting to be conducted into the Senate. There was also the Graecostasis, where on the strength of a passage in Varro we are told that ambassadors were accustomed to sit. From that place they were invited into the Curia, where the Senate was in session. But these were cases where ambassadors were permitted to enter the town (*oppidum*). This was the designation of that part of Rome which was within the walls; it was distinct from the city, although our jurists have expressed a different opinion, and the terms are confused by Livy as well as by others. It was not customary to admit the ambassadors of an enemy into the town, and sometimes there was objection to admitting the ambassadors of foreign nations. These used to be received outside the city either in the temple of Bellona, in the council-hall of the Senate hard by, in the temple of Apollo, or perhaps in the temple of Hercules or in that of some other foreign god situated outside the city—the same temples in which an audience of the Senate was given to citizens who were prohibited by law from entering the city because they were invested with the right of supreme command. Yet it did happen that if the Senate had so decreed, ambassadors of this kind also could enter the city. We have trustworthy information to the effect that Cineas, the ambassador of Pyrrhus, entered. The statements by Livy in his forty-second and forty-fifth books regarding the ambassadors of Perseus and Cotys tend to the same conclusion. But there is no doubt that for the most part the Romans paid careful attention to this custom and law. They did not admit the ambassadors of the Numantians, lest by that act they might seem to ratify a treaty to which they were opposed. As regards the reason for not admitting enemy ambassadors into the city, it is manifestly identical with that which

Livy 45

D. 50. 16. 2

Livy 3, 4, 37
39, 41, 42
Festus

41

Flor. Epit. 1

Dio Cassius

prevents personal enemies being received into our homes today, just as it prevented them under the rule of the ancients. These enemy ambassadors, if they had come to the camp, would have been received in the quaestor's quarters, as others on the authority of a manuscript of Hyginus have informed us. So much about the place of reception.

Lipsius on
Tac. Ann. 1

Alexander,
Dies geniales
4. 10

Manutius on
Cic. Verr. 3

Livy 28, 39
40, 44

42

Alexander,
Dies geniales, 2

Hist. Rom. 12

In regard to the time we are informed that the embassies of provincials and foreigners were usually given an audience in the month of February. While many have noted this fact, they have failed to enlighten us on the details of the situation. I say nothing about the provincials, for since they were under Roman rule, a date on which they were to come could be fixed. But if an allied king or even a foreign monarch had sent an embassy on the last day of February, would his ambassadors have to wait a whole year? I notice besides that audiences were granted to embassies at all seasons. What, then is our conclusion? It is credible (and I have read this somewhere) that February was specified by the senators to serve as an excuse for their being relieved from all other business during that month, for it seems that nothing else could be done. Yet I observe that the period immediately following the assumption of office by the magistrates was devoted exclusively to this business of giving audience to embassies, and that there generally were a great many embassies at Rome at that time. Such seems to be the situation in regard to these points. Now, retracing our steps a bit, let us note the fact that when some unknown embassy was approaching Rome, spies and magistrates of the higher rank went out to meet it, that they might get some information as to the personnel of the embassy and the embassy itself, and so might be in a better position to deliberate at Rome on all the details of the policy to be followed in receiving it. That a quaestor was sent by the Romans at public expense to serve as the guide and escort of some embassy on part of its journey, we read in several passages. I have noticed in Polybius' *Selections* that ambassadors who came to Rome for the purpose of offering congratulations were also met. I suppose that the custom of setting spies on embassies arose from the fear of their bribing someone. Appian somewhere mentions precautions of this kind. Others attribute the custom of providing ambassadors with lodgings at public expense to a desire to prevent intriguing in private houses. The same writers quote from Demosthenes the story that Philip punished those who entertained ambassadors privately. Although this does not belong to Roman history, it has a bearing on it, and for that reason I have mentioned it here.

CHAPTER XVI

The Gifts and Other Tokens of Hospitality Which the Romans Gave to Ambassadors Who Came to Rome

That it was customary for presents to be given to ambassadors 43 who came to Rome, and that other kinds of hospitality were courteously shown by the Romans, we are informed by Livy in his forty-second book. However, these were allies and friends, as he shows elsewhere. But in his thirtieth and thirty-third books he remarks that the hospitality of the Villa Publica was extended also to enemies; yes and perquisites also. Yet those to whom these things are said to have been furnished were not so much ambassadors of enemies, as of the vanquished, of suppliants, or of nations virtually surrendering. To the ambassadors of those who were still enemies nothing seems to have been given. Only about Cineas and certain ambassadors of the Numantians have I read anything different. In dealing with others, though they seemed most unworthy, I read that the benevolence of the Romans reached the point of sending presents. But what were the things usually given to friends? *Locus*, *lautia*, and *munera*. Under the term *locus* I understand a free residence and free seats at the games, as Livy also says. The epithet, "free," I am inclined to refer to the legal phase of the subject, and I shall explain it in the next book. Plutarch tells us what *lautia* are. Perquisites given to ambassadors, he says, are called *lautia*. They are supplies for the ambassadors. See the forty-second book of Livy. Horace in one passage, according to the account of Porphyrio, had all kinds in mind, though he referred specifically to salt and fire-wood only; and the same commentator states that the purveyors who prepared these things for the ambassadors of kings and states were in Latin called *copiarii*, because they furnished the ambassadors mentioned above with a supply (*copia*) of all things that were necessary. The word *copia* is used somewhere in the jurists with the force of *commeatus* (supplies), and elsewhere we find the military term *copiarii*—matters on which Douaren has given us 44 information in the twenty-sixth chapter of the first book of his *Disputations*. Instead of *lautia* the ancients used to say *dautia*, as Festus reports; and we are indebted to the same authority for the theory that the *lautia* were so called from the magnificence of the service.

Livy 45

Appian and
Cassius Dio,
in Selections

Livy 23, 30,
35, 42

Quaestiones
Romanae

Sat. l. 5

What shall I say about the *munera*? They were gifts to ambassadors and sometimes to their suites. However, I have no recollection of reading of more than a hundred crowns being given to each one; for the most part twenty were given, unless of course some person of special distinction had come, or some other unusual situation had arisen. For example, to Masinissa's son a present of a hundred pounds of silver was given, worth, it is said, a thousand crowns; and to King Antiochus' ambassador an equal amount (one hundred thousand *asses*) was presented. The Romans were easily able to do this, since he brought them as a gift gold vessels weighing five hundred pounds, valued at fifty-six thousand crowns. To Attalus also, the brother of King Eumenes and one who had done great service to the Roman state, presents were given: two horses, two suits of knight's armor, silver vessels weighing a hundred pounds, and gold vessels weighing twenty pounds. That the Romans were more niggardly in this matter than might seem to be in accordance with the dignity of so great an empire, should be explained as due either to the desire that they, the givers, should be respected rather than the thing given; or to their belief that, in consideration of the great number of embassies, it would not have been wise to be more generous. Plutarch relates that at first it was usual for ambassadors to register with the quaestors, their names being entered on the public records; that presents were sent to them by the quaestors; when they were ill they were cared for at the public expense; and if they died, were buried; that later when, as I have said, the number of embassies became inordinately great, the giving of presents and supplies was discontinued, and only the custom of enrolling their names was retained. This is a fact. The jurist Modestinus writes that the list of ambassadors used to be published at the treasury in the temple of Saturn (as Plutarch says), or entered in the records of the emperor. This may refer both to provincial ambassadors and to ambassadors of the Romans themselves or of the emperor. It is with shame that I report Ulpian's statement that funds realized from the personal effects of condemned persons were used by provincial magistrates in making presents to the ambassadors of barbarian peoples. Under the same law the transportation facilities of the public postal system were placed at the disposal of ambassadors. They were granted some remission of taxes; and certain commercial advantages, forbidden to others, were conceded. On one occasion the Romans allowed ambassadors from

Livy 28, 30

Livy 42, 45

Livy 35

Quaestiones
Romanae

45

D. 48. 20. 6
C. 12. 50. 16,
22; *ibid.* 4. 61.
8; 4. 63. 41

Transalpine Gaul to take some horses from Italy, and furthermore, on their departure gave them letters of recommendation to the Kings and states through whose territory they had to pass on their journey home. Such is the account I have read in the eighth chapter of the thirteenth book of Josephus' *Antiquities*, and in the same author (I had almost forgotten this) it is written in the seventeenth chapter of the fourteenth book that at public games seats in the orchestra, the place of greatest honor, were given to ambassadors. This is related also by Suetonius both in his *Augustus* and in his *Claudius*. What the Romans and others gave to their own ambassadors I shall show in the next book. Here I will close my account of Roman history. Livy 43

The Practice of the Greeks in the Matter of Embassies

Sigonio, De
republica
Atheniensium,
4. 7

Charmides

Plato, Menon

47

I have also some Greek historical material which I should not like to omit. It is claimed that at Athens the responsibility of sending ambassadors rested with the people, and this is confirmed by the oration of Aeschines *De falsa legatione*. Yet from the same source we have the information that embassies used to come to the Senate none the less, and were summoned into the Senate-house by a herald, and the Senate would discuss the advisability of their being presented to the people. These statements are supported by the account given in the *Alcibiades* of Plutarch. The last-mentioned feature of the system is in agreement with the Roman plan, provided the Athenian Senate actually did have as much power in the matter as the Roman. Sigonius explains the principle which the Athenians observed in sending embassies, and says that it was by merit, and not by lot, that men attained to the exalted dignity of this function. Plato furnishes some good evidence along the same lines, when in extolling one Pyrilampes he claims for him integrity and worth on the ground that he had executed numerous embassies of different kinds to the great King of the Persians. This argument would have had no force if embassies had been awarded by lot. The matter is in fact worthy of special note. For in appointing magistrates the Athenians used to leave everything to the lot, so that some are of the opinion that their state ought to be known as "the commonwealth of the lot," and Socrates went so far as to call the Athenians stupid for the same reason, as Xenophon in the first book of the *Memorabilia* has related. Nevertheless, I know that many magistracies, and the most important too, were conferred in a different way. But this discussion is aside from my subject. That the Athenians furnished their ambassadors with a large sum for traveling expenses is shown by Demosthenes in that oration which he wrote (Plutarch says that it is uncertain whether it was ever delivered) against Aeschines *De falsa legatione*. Plutarch states that it was only after he had stipulated for a fee of five talents that Demades undertook the embassy to Alexander which Demosthenes declined. Aeschines is our authority that in Athens also it was customary for the names of ambassadors to be entered on the public records. The

same orator tells us that the ambassadors of other nations, if they were deemed worthy, were accorded the honor of an invitation to dinner in the Senate-house, and were honored with complimentary speeches. Moreover, at the public games in Athens, as Cicero in his *Cato* shows, a definite assignment of seats was made to ambassadors. It is our opinion that the hospitality of the state was also extended to them, because on one occasion the Athenians are reproached for not having treated a certain herald as a guest of the state. It seems certain, however, that in Athens ambassadors were sometimes the guests of private individuals. Furthermore, that Greece received ambassadors in theaters, Senate-houses, and fora we know both from the ninth books of Herodotus as well as from other sources. The same author in his seventh book relates that among the Spartans the honor of membership in embassies was assigned to the family of the Talthybiadae alone, and in explanation of this fact he tells us that a certain Talthybius had been the herald of King Agamemnon; a temple had been erected in his honor at Sparta, and on his account this prerogative had been conferred on his descendants. Such is the history of Talthybius. He is a famous Homeric character. The story, however, can be accepted only when strictly confined to heralds. That kings and others at Sparta were sent on embassies is mentioned by Aristotle in the second book of his *Politics*, and by Xenophon in his panegyric on Agesilaus. And Eustathius confirms this distinction. But at Sparta who was charged with the responsibility of sending ambassadors? I believe that this duty was incumbent on the ephors and the kings, since the Spartan state was not unlike the Roman, if we are to believe Polybius. Yet from several passages in Plato we can see that the form of constitution had changed there also. Xenophon, however, in the book which he wrote on this state says that the matter of embassies was intrusted to the care of the king. The same writer in the second and fourth book of his *Hellenica* is our authority for the statement that embassies came both to the kings and the ephors, and were introduced by them to the assembly. That the kings responded to ambassadors we infer from Plutarch. Among the Achaeans, to be sure, as Livy shows us in his thirty-second book, the praetor was accustomed to reply to ambassadors, though only after he had been authorized by a decree of the people. This agrees with the Roman system, like that other custom common to all the Greeks (though they used a herald for the purpose), by which the

Xenophon,
Hellenica

Ibid., 5

Iliad 3, 4, 7
48

Bk. 6
Leges 3, 4

magistrates granted anyone who wished, an opportunity of speaking on the business of the ambassadors to whom an audience had been given. What shall I say, what comment shall I make about Plato's republic? That is not a republic, but an ideal, no matter how strongly the philosopher might object to such a description. As a matter of fact in the ninth book he ingenuously admits that it exists on earth
49 in words only. Among the Mantineans the leading men of the nation used to receive ambassadors, and it was they who considered the question whether the envoys should be presented to the people. Observe to what extent Roman institutions have been derived from those of the Greeks.

Leges 12
Rep. 5, 6

CHAPTER XVIII

The Herald's Wand, Olive-branches, and Other Ceremonial Insignia

Just as the Romans used to carry herbs (*sagmina*), so the ambassadors of the Greeks carried what are called *cerycia*, as the jurist says. *Cerycia* are herald's wands (*caducei*), for Eustathius in a note on the second book of the *Iliad* says: "Jupiter gave a wand (the Latins say *supplicia*) to Mercury as a *cercium*." According to the same author the *cercium* is a wand serving as a symbol that the bearer is a herald. The wand, as Suidas writes, is a rod with two serpents intertwined about it and looking at each other. The rod is straight, a symbol of straightforward discourse, and the representation of the serpents gazing at each other signifies hostile camps. The fact is that it was only in wars and amid the din of arms and the heat of battle, certainly only between enemies, that heralds (*caduceatores*) carried on their negotiations. Under the term "enemies" I include those who are hostile by nature. Barbarians, for example, setting out for Greece needed a herald or some other person of the kind, if they wished to avoid injury at the hands of the Greeks; and the Greeks in turn had a similar need, when going into the country of barbarians. For it was held that a permanent state of war was natural between barbarians and all who were Greeks. My statements about the use of heralds are not open to dispute, based as they are on the *Alcibiades* of Plutarch and on many passages of Thucydides and of my Livy. And yet, although these envoys were employed only in war, nothing warlike, nothing hostile was ever heard from them. The heralds prayed for or offered peace, sued for a truce, requested bodies for burial, or sought an opportunity of ransoming or exchanging captives. In short, their actions and words, one and all, were such as to be far removed from the essential principle of warfare. "Heralds," says Festus, "are ambassadors seeking peace." The Latin translators, therefore, seem open to some criticism, who in their rendering of Thucydides and Plutarch, though they might have used the word *praeco* in designating the ambassador who declares war and challenges to battle, preferred to keep close to the Greek and translate by the word *caduceator*. A much more serious fault is committed by

D. 1. 8. 8

50

Thucydides 1
Plutarch,
Pyrrhus

- Bk. 14 the translator of Appian, who uses the same word (*caduceatores*) to signify those who cheered on the Romans in battle. I realize that in this matter I am a cobbler who has abandoned his last, but such is the evidence I have found. It is supported, moreover, unless some other
- Bk. 4 interpretation of the point should finally prevail, by Polybius' statement that in proverbial speech the spear and the herald's wand (*caduceus*) were used for war and peace. We have accordingly good grounds for concluding that the term *caduceus* signifies peace. This
- Gell. 10. 27 is shown by the next section in Suidas and by Gellius, who says that "the spear and the *caduceus* are symbols of war and peace." Evidence
- Bk. 25 is furnished also by Ammianus' statement that Julian on account of
- 51 his policy of conciliation was called the *caduceus* of the world. I add Pliny, who in the third chapter of his twenty-ninth book has made among other remarks the following statement bearing on the present problem: "Yet it is this intertwining of the serpents, this concord between such savage creatures, that seems to explain why foreign nations have given the herald's wand with its serpents a place in peace negotiations. Nor is it customary to have crested serpents on the wand." But what is it that Pliny says about foreign nations? Can we assent to his statement? Observe the connection between these questions. Gellius narrates that a letter was written by Quintus Fabius, the Roman commander, to the Carthaginians, notifying them that a spear and a herald's wand had been sent to them from Rome, as symbols of war and peace; according to Varro, two tokens were sent, on one of which was the representation of a wand, while on the other a spear was incised. In regard to the tokens Varro has a supporter in
- D. 1. 2. 2. 18 the jurist Pomponius. According to these authors therefore the Romans also were accustomed to use the wand. But neither in Polybius nor Livy, who treat this period of history at considerable length, is there even mention of tokens. Nor is this the only point on which the jurist differs from Polybius and Livy. There is a divergence of opinion in regard to the following matter as well: The version of the latter is that a declaration of war was made to the Carthaginians by the ambassador; the former (and herein he is at variance with Varro and Gellius also) writes that the two tokens were laid down by the Carthaginians, and the choice given to the Roman ambassador of taking back to Rome whichever he preferred; and he in turn picked up both, saying that the Carthaginians ought to ask for the one which they preferred. Further, the jurist and Livy do not agree in regard to the name of
- Polybius 3
Livy 21

the ambassador. Why, then, should we abandon the consensus of 52 the greatest writers and the authority of Pliny, in order to follow authors of less weight, even though on the present question they have the support of a jurist? I hold therefore that the Romans did not use the *caduceus*. But that their neighbors, the Privernians, did use it, I have evidence from the eighth book of Livy. To this account let me add that another function of the heralds was to officiate at duels, exercising supervision by regulating the fighting and keeping it within bounds according to their best judgment. So I observe from the *Protagoras* of Plato. Tasso makes use of this custom in the contest of Tancred and Argas; and Homer in the duel between Hector and Ajax in the seventh book of the *Iliad*. Furthermore, if a brawl of any kind broke out, the heralds would quell it by interposing the *caduceus* (scepter it is called). See the twenty-third book of the *Iliad*. This finishes my account of the *caduceus*. I must, however, add that Eustathius says that heralds derived their origin from Cerycus, son of Mercury. Now in the Greek language the word for heralds is κήρυκες. This can be reconciled with the other statements that have been made above. But was the following fact (it ought not to be passed over) mentioned by Alexander peculiar to these ambassadors, or was it common to all who went to and fro in time of war? "Among the Greeks," he says, "ambassadors could not even enter the territory of the enemy, unless they had heralds with them; nor could anyone perform the function of an embassy unless he had first washed his hands in water poured over them by heralds, and had made a libation to Zeus from goblets wreathed with garlands." My belief, which is based on facts which I shall set forth in the next book, is that this was not in 53 any sense an essential duty of the heralds. The ceremony must have been performed by others. I have mentioned these things here because we are now dealing with ceremonial usages. To this place belongs also what I have to say about olive-branches. That the custom of carrying them was characteristic of suppliants, and that it was a Greek custom is shown by a great many passages of Livy. These branches (they were called *ικετηρία*) were decked with fillets or wound with wool. Even suppliant ambassadors suing for pardon or aid carried them on their journey: facts established by the seventh and eighth books of the *Aeneid* as well as by the prologue of Plautus' *Amphitryo*. The Argives were accustomed to send heralds wearing garlands. What of the other details of costume? Dionysius states

Livy 24, 25, 30
35, 35, 37, 44,
45

Xenophon,
Hellenica 4
Bk. 2

that the Roman fecial priests, when on an embassy, wore an impressive garb with awe-inspiring insignia. Appian assigns a sacred stole, an inviolable vestment, to ambassadors of this class, saying that it was of a reddish hue. Virgil also, in his sixth book, represents a herald's garb as of this color, and, unless my memory plays me false, Plutarch somewhere in his *Lives*, speaking of the Greek custom, specifies a similar dress for other ambassadors. I believe that at Rome gold rings also were given to ambassadors; and that there was need of their being given, since otherwise, as ambassadors were chosen from all classes of society, many would have been without them. I think too that they wore their insignia not only when they had reached the place where they were to perform the duties of their embassy, but while on their journey. For a jurist says: "*Sagmina* are a species of herb which am-
54 bassadors of the Roman people are accustomed to carry, lest anyone should do them injury." Xenophon in the sixth book of his work on the expedition of Cyrus speaks to this effect: "While the horsemen were riding on ahead, they lighted upon certain ambassadors. It was not known where they were going."

CHAPTER XIX

Gleanings

Let us gather together now whatever observations of this kind we have left; they will prove a useful supplement to the others. I am inclined to think that the ancient Hebrews used to give audience to ambassadors at the gates of their cities, for it was there that they were accustomed to hold their assemblies. We know for certain that embassies were heard by the chief magistrate of the nation and a council of the leading citizens. I am speaking of the period when they did not have kings. I am convinced that the Carthaginians had the same system as the Romans: that their Senate had charge of the business, granting audiences to ambassadors either in temples or senate-houses; that the *sufes* (who in Carthage corresponded to the consul at Rome) played the part of the Roman consul or praetor; that the Senate decided the question of sending ambassadors; and that all the other details which we have mentioned in connection with the Romans were handled by the Carthaginians in a similar manner. Livy states that the Gauls heard embassies in an assembly of armed men. It was characteristic of their barbarous condition that Indian kings gave audience to ambassadors while combing their hair and beards, as has been related by Curtius in his eighth book. Curius is also open to criticism who, as the story goes, during his dictatorship heard the ambassadors of the Samnites while turning over with his hand the cheapest kind of food in the market place. Alexander the Great is said to have observed a fixed order in hearing embassies. First he would hear those who had come on religious questions; 55 secondly, those who had brought gifts; thirdly, those negotiating about hostages; fourthly, those who had private business with himself; and finally, those who had come to discuss the restoration of exiles. Now let us examine the ceremonies. The natives of Nertobriga in Spain, as Appian notes, carried a wolf-skin instead of the herald's wand. Barbarians, Suidas says, bear garlands and leaves, with the same significance as the wand, to indicate to the Greeks that they have come with peaceful intentions. At the present time we call those who go forth to declare war heralds (*araldi*). They are dressed in a distinctive garb, marked with the insignia of the prince by whom they

Deut. 17
Jos. 19

Livy 21, 30, 41

Bk. 21

Sen. Cons. ad
Helv. 10. 8

Diodorus
Siculus 12

are sent. But whether it is their custom to put this dress on before they have arrived at the place where they are to state their mission, I do not know. I shall not, however, linger over the history of the present period. The formula used by ambassadors of the Persians when demanding surrender was that their king ordered that water and earth should be given to him. This is not only mentioned by Greek writers, but is discussed by Livy in his thirty-fifth book. The formula
Livy 1 covers everything which used to be specified in a longer screed among the Romans, for water and earth contain everything which can be surrendered. It remains for me to say something about presents.
Bk. 39 Livy reports that gifts were presented by the Gauls to Roman ambassadors. The presents that the kings of Persia gave are described in detail by Aelian in his first book. We are bound to believe that they
56 were on a large scale, for at Athens Epicrates urged the passing of a decree that poor men should be sent as envoys to the king of that country that they might improve their fortunes. But what purpose do I serve in citing these and other examples which I might collect? It is to show that the institution of embassies, with their maintenance, rights, and dignity, has existed among all nations.

CHAPTER XX

The Reason for Embassies and Their Antiquity

One question pertaining to the historical treatment remains, namely, that of the origin and age of embassies. Some writers ascribe the institution to Belus, who was the father of Ninus. Josephus attributes it to God, who he says made angels for the purpose of performing this function. The conclusion to which I have come is that it was after the separation of the nations, the foundation of kingdoms, the partition of dominions, and the establishment of commerce that the institution of embassies arose. So long as men were in so primitive a state as that depicted by Lucretius in his incomparable poem, they were incapable of respect for the common good, nor did they know enough to adopt customs or laws of a reciprocal nature. Later, those having contiguous territory began to form friendly compacts, and to refrain from doing injury or violence to one another. Such is the statement of the case in Plato's *Protagoras*. But since it was inevitable that obligations and negotiations should arise between organizations having such reciprocity of rights as exists between nations, commonwealths and kings, and since those organizations are either unwilling or, as often happens, unable to meet (certainly states can not meet), it was absolutely necessary (as Ulpian says about the procurator in a similar discussion) that others should be appointed, who by representing the organizations would be able to transact the necessary business. These representatives, moreover, had to be persons such as we see ambassadors are, that is, persons not subject to him to whom they are sent. Otherwise the distinction of sovereignties would not be kept intact. For if he who represents a prince is a subject of the sovereign to whom he is accredited, the prince himself is a subject in the person of his representative. Furthermore, it is mentioned in the most ancient of all books that ambassadors were sent by Moses on more than one occasion. Nor do I doubt that ambassadors were employed at an even earlier date. To be sure, Moses wrote the family histories of the earlier period, but as embassies are not a private institution, he could not mention ambassadors until a state had developed from the family, which at that time was of necessity the subject of his narrative. Unless we hold in contempt the con-

Antiq. Iud.
15. 8

Bk. 5

Cic. Inv. 1

57

Num. 20, 21
Deut. 2

Justinus,
Jordanes
and others

Polybius 13
Livy 1, 42

Plutarch,
Poplicula
58

Plutarch,
Adversus
Coloten

Plutarch

Livy 25, 27, 28,
39, 40, 44

sensus of writers, we certainly shall not, in settling the question of the origin of the embassy, abandon the view of those who set it down to the credit of Belus. The literary tradition is that kingship began under Ninus and the rule of kings is everywhere said to be older than any other kind of government. Feacial priests and heralds, as well as the free embassy, undoubtedly have not so ancient an origin. Here I am speaking of ceremonial rites. For I am inclined to think that declaration of war has been a custom in every period, even in more remote ages than the Punic (as Livy would call it) and the Greek eras. Moreover, who doubts that wars occurred soon after the separation of the nations? That the functions of the herald at any rate began then I am certain. To the free embassy I do not assign so remote an origin. Its beginning can easily be traced to letters of recommendation; and since its object is some private interest, the principles mentioned above do not apply to it. Furthermore, it does not seem to have been peculiar to the Romans. Aeschines mentions a certain Phrynon who begged the Athenians to send him as an ambassador to Philip, to enable him to recover a certain sum of money that was owing to him. And definite information on this point is found in the fact which I related in the last chapter, that ambassadors at the court of Alexander referred their private affairs to him. These were simply persons on a free embassy. In regard to sacred embassies, inasmuch as there is nothing more ancient and more widely accepted than divine worship, I am of the opinion that they also are of very great antiquity. The silent embassy I do not set down as older than the examples I have cited, since it is scarcely possible that men of a primitive age would have known how to devise such mysteries. I might introduce some Egyptian institutions here, but I do not care to give such ceremonies a place beside those which owe their origin to necessity. In regard to the resident embassy I am in doubt. I know that Athenian ambassadors stayed with Demetrius for two years, but it may be asserted that they were not resident ambassadors. Someone will also speak of Leo's having been, according to the testimony of Demosthenes, on an embassy to Timagoras for four years, but not even that can be regarded as a strong argument. To conclude, I am of the opinion that this custom came to us from the similar embassies of the provincials and the allied nations, which often, unless I am mistaken, remained for some time in Rome. It undoubtedly became more prevalent owing to the policy of the Popes, for on their manifesting

a tendency to have their own ambassadors everywhere, other princes 59 imitated the practice. I have been brought to this opinion by a man of rare erudition and nobility, the most distinguished of Englishmen, Sir Philip Sidney. There was good reason for such a type of embassy, because occasions for negotiation arise so frequently between princes that it would be more inconvenient to keep sending ambassadors than to maintain them always at one another's court. Others may adopt the degrading view that they are spies—secret-service agents, maintained for the purpose of espionage. That is not my opinion.

THE SECOND BOOK
ON
EMBASSIES
BY
ALBERICO GENTILI
Illustrious Jurisconsult

CHAPTER I

The Right of Embassies

In our first book, which we devoted to an explanation of the kinds of embassies and an account of ancient (especially Roman) institutions, we may seem—and there is good ground for the belief—to have strayed, so to speak, from our own special field. But the present treatise seems to us to have needed this material, especially the discussion contained in the numerous chapters at the beginning, in which we explained as many kinds of embassies as we could include in one and the same investigation. Moreover, this information is essential to the proper organization of the rest of our discussion, which deals with the rights and duties of ambassadors. For it is inevitable that our conclusions on each of these will vary according to the particular kind of embassy under consideration. But not even in the other chapters, according to our way of thinking, have we wasted our efforts. For besides the historical account, such as we have been able to give, we have expounded theories involving more than the mere labor of compilation. The history itself was useful (for no history is without utility), and in telling the story of the care and attention bestowed upon embassies, of the ceremonial observances connected with them, of the perquisites and the honors granted to them, and in explaining the reason for their existence and their origin, we have at least shown not only that the right of embassies is a mighty institution, but that an ambassador is expected to perform the duties of his office to the utmost limit of his ability. For indeed he is treated with such great distinction that we may go so far as to say that there is nothing which can increase the honor and safety of his office that is not granted him in abundant measure. Further, many of the institutions which we have discussed are not characteristic of ancient times exclusively, but of our own period also and will hold for all future ages. And other practices, as we shall find if we care to investigate contemporary history and compare it with what has been cited from ancient times, have been changed rather than abolished. Moreover, I have been induced to give preference to ancient customs in my exposition by the consideration that those which now obtain are commonplace and familiar to all. Besides, the latter would never have won for embassies that degree of prestige which we assert they have, and which age so easily adds to

all things. Accordingly (to proceed straightway to an examination of the rights of embassies) if all antiquity, if Greece and Rome in so many ways and with such strong religious feeling and elaborate ceremonies attest that embassies enjoyed the highest honor among them, are we not justified in claiming a like distinction for them among ourselves and among all nations, now and forever? The right of embassy, Cicero says, is defended by a rampart of human and divine authority, and Caesar and others agree with him. It is in fact, according to my interpretation, a right that is, by reason of a certain divine providence, immutable, of universal application, and admitted and recognized even by barbarous peoples. This is confirmed by Procopius in the speech of Totila in the first book of the *Gothic War*. That the right of embassy was in general sacred among all peoples, Probus attests in his *Pelopidas*. Tacitus in the third book of his *Histories* calls it sacred. That ambassadors were sacred and inviolable, Pomponius, the jurist, in his thirty-seventh book notes with reference to Quintus Mucius. Dionysius in his fifth books calls the persons of ambassadors sacrosanct. And Cicero (to end this accumulation of testimony with him who was our starting point) says that the title of ambassador ought to be held in such respect as to be safe not only under the laws of allies, but even amid the weapons of the enemy. These facts have been so thoroughly ascertained, are so certain and well known that one of the oldest of proverbs is said to have been: "An ambassador is neither killed nor outraged." Eustathius tells us that heralds were regarded as a divine class, or at least as a sort of middle class between men and gods, nor was any other view in regard to them ever held except among the Laestrygonians, Cyclopes, and others who did not know sacred law. Homer calls them "messengers of Zeus and of men"; Xenophon in the second book of the *Cyropaedia*, "ambassadors worthy of all honor"; and Festus quotes Cato as saying: "No one injures a herald." But all other ambassadors have this privilege of immunity, as we stated just now, unless perhaps we should make an exception of provincial ambassadors, upon whom it is true the name is conferred only on account of a similarity in service, and because in their ambassadorial capacity they are endowed with many privileges of civil law. The above remarks, however, refer to international law, which far excels and surpasses all others. Before speaking of it, many questions involving the relations of all other ambassadors to it must be discussed.

Har. Resp.

Gall. 3

D. 50. 7. 18

Verr. 3

Decr. 1. 1. 9
 Hegesippus 1. 36
 D. 50. 7. 18

CHAPTER II

The Spurious Embassy

Our first inquiry will be in regard to those who, although they have not been sent as ambassadors, use the title of embassy as a pretext. These I divide into two classes, of which the first will cover the cases where one has not been sent with the title of ambassador; the second the cases where one actually has been sent on an embassy, but has additional instructions to engage in activities of a wholly different character and of criminal intent. Some would include here also the false embassy, so called because the ambassador has done or said something contrary to his orders; but we can not give that embassy a place here where our subject is international law, which controls relations with foreigners, not with one's own people. We shall treat it elsewhere. As an example of our first class, we mention the ambassadors whom Philip, King of Macedonia, sent to Hannibal. Falling into the hands of the Romans, they said that they had been sent to them as ambassadors. Then there are the Illyrians mentioned by Livy in his forty-second book who, staying at Rome, were suspected by the Issaeans of being spies in the guise of ambassadors. Next comes that large company of distinguished Carthaginians who, on being captured by the elder Africanus, manifestly lied in saying that they had been sent to him as ambassadors. Valerius has described the incident in his sixth book. To them I might with good reason add the Illyrians, since even the Roman Senate was of the opinion that their statement was a lie. They were at Rome; they did not demand an audience of the Senate; they did not wait on any magistrate, in order to receive, in accordance with custom, the things which were regularly furnished to ambassadors; finally they did not come before the Senate until they were summoned. Further, when these facts were made the basis of a charge of mendacity on their part, they stumbled noticeably in their reply. Under our first class, then, we have recounted three examples, but these examples are of such a character as to justify the subdivision of that class into various species. One's embassy is spurious when, although an ambassador, he is not an ambassador to the person to whom he claims he has been sent. Such are the Macedonians. One's embassy is spurious when he is an ambassador

to no one. Such are the Carthaginians. Finally one's embassy is spurious when he does not announce his title of ambassador at the proper time. Such are the Illyrians. Let us define here the last two species. For to the first species a special chapter must be given, and our second class calls for a much more extensive treatment. So far as the Carthaginians and others of the kind are concerned, everyone, I think, will feel sure that they did not, and do not, deserve to be received under any right of ambassadors. For one who has not been sent is certainly not an ambassador, as Demosthenes and Cicero point out, and as common sense itself shows. If therefore Africanus dismissed them in safety, he did not do so under any pressure of law, but at the dictates of that kindness and magnanimity which were so characteristic of his nature. That this is the situation we shall show by more than one passage. Valerius in his account of the incident says that Africanus preferred to have men think that the good faith of a Roman commander had been betrayed, rather than that it had been appealed to in vain. But let this brief account of the Carthaginians suffice. As regards the Illyrians, I believe that the Roman Senate established a precedent which all must follow. "It was decided," Livy says, "that an answer should not be given to them as ambassadors," and the reason was that they neglected to present their credentials at the proper time. It is not permissible to fall back on a right that we have neglected, and a title which we scorn to acknowledge should certainly not be available at some later date, when we want it for protection. It is in the highest degree reasonable that we should not be able to have, when we want it, what we refused when we ought to have accepted it. Although I could illustrate these principles by many citations from civil law, I gladly refrain from the labor involved, since they are sufficiently and more than sufficiently self-evident. I believe that the decision was right. But are we to follow it without qualification, even in a case where a man subsequently shows by his instructions and by incontestable credentials that he is an ambassador? Such a course would be based on good reasons. The question is, are we to act on these reasons? For example, if this ambassador has committed some crime which deserves punishment, should he be punished just as if he were not an ambassador? I think he should. The Illyrians were not punished, but that was because there was no case against them. The fact that they were discredited as ambassadors did not

Cic., Flacc.;
Sest.

D. 29. 7
C. 4. 51
C. 5. 12

convict them of being spies, and even apart from the right of embassy, it was permissible for them to be at Rome. That they lingered there, even after their claims to ambassadorial rights had been repudiated, could not be detrimental to them. This principle is also confirmed by many passages of our law, which Baldus, and others besides Baldus, note, commenting on *Code* 6. 30. 5. The Romans did what they could. They withdrew the title which the Illyrians were falsely assuming, or at any rate had forfeited.

C. 4. 21. 10;
ibid. 5. 13. pr.

CHAPTER III

Are Ambassadors Safe, Even among Those to Whom They Have Not Been Sent?

Here we must describe the embassy which, though sent to a particular nation, some persons might claim to be entitled to ambassadorial rights among people of another nationality to whom it has not been sent. In order to submit the question to a twofold scrutiny, let us inquire whether these rights should be granted, first when the embassy has not been sent to the person with whom the ambassadors claim safety, and when they acknowledge that they have not been sent to him; and secondly, when they actually contend that they have been sent to him. I shall dispose of the latter case first, since it is connected
66 immediately with my preceding remarks. In my last chapter I cited the instance of the Macedonians. "They," as Livy narrates, "at first escaped by a successful lie, but being afterwards detected, were arrested and taken to Rome." Rightly. For they were not ambassadors to the Romans, but to their enemies, and if in devising hostilities they themselves suffered reprisals, they had no more just cause for resentment than a soldier who claims mercy from the enemy on the ground that he is fighting not for himself but for his prince. Now I shall explain the other case. In Roman law the technical term for ambassadors is *legati* from *legare* "to send with a commission," and so from their very name the function of ambassadors is limited to those to whom they are sent. Among others they are not entitled to the rights of embassy. Otherwise, why in the truce between the Lacedaemonians and Athenians would special provision have been made for the safe conduct by land and sea of a herald and ambassadors and whatever attendants they should have, while passing to and fro between the Peloponnesus and Athens for the purpose of putting an end to the war and arranging for the arbitration of disputed questions? Further, the ambassador of the Persian King to the
Thucydides 4 Lacedaemonians was intercepted by the Athenians; and the ambassadors of the Spartans, when on their way to the Persian King, were captured by Sitalces and given up to the Athenians, who put them to death. The Illyrians put to death an ambassador of the Issaeans to the Romans and an ambassador of the Romans to the Issaeans. Nor
Appian 23
Xenophon,
Anabasis 6

did Xenophon refrain from ordering the detention of ambassadors captured while on their way elsewhere. I can relate other and more recent cases of this kind, which have not been, and in my opinion ought not to be, censured. But in this investigation it is principles that we are seeking. To the principle already laid down, therefore, 67 let a second be added, that since the right of embassy is not possessed by one who is not transacting state business with the sovereign (as we shall explain in regard to the free embassy), much less will it be possessed by one who has no business at all with him, inasmuch as he has not even been sent to him. Yet it is only on what is called a rigid interpretation of the law that these principles hold. That every sovereign ought to show many courtesies to ambassadors, even when they are not accredited to him, is too well known to require any confirmation from me. Alexander spared even those Carthaginian Curt. 4 ambassadors who had come to incite the Tyrians against him. The ambassadors of the Lacedaemonians with a similar mission proved by their treachery that they were unworthy of his clemency. Moreover, the fact that the mission of ambassadors is one of peace (on which account they themselves may be expected to deal peacefully with all) tends to encourage this kindly attitude. They represent a prince or a state. They have charge of public business. From being sacred they presently become sacrosanct and inviolable, even in the sight of an enemy. The roads therefore should be open to ambassadors, nor is there any reason why obstacles should be placed in their way. We know how foul a slur was cast on Charles V by the bare suspicion that he had put to death the ambassadors of the King of France while on their way to Turkey. For the men of that time believed that it was at his command or by his creatures that this base deed was done. We have heard that war followed immediately. Even the murder of a messenger, and that too as the result of a private Guicciardini 10 conspiracy on the part of certain soldiers, caused the Tigurini to take up arms against the French. In regard to ambassadors on sacred missions, I think it should be decided once for all that they ought to 68 be sacrosanct everywhere. For toward things sacred, as toward God, all stand in the same relation. We have shown how kindly the Lipari pirates treated the Roman ambassadors who were on their way to Delphi. Of the temple at Delos Livy writes that Romans and Macedonians tarried there in close association with one another; the sanctity Bk. 44 of the temple and of the island guaranteed inviolability, and the

religious associations of the place brought about a truce. Now if the sacredness of a place has such influence, what limit can be set to the effect of sanctity in a man himself? Why should I mention the famous
Livy 5 case of Fabius, who, while religious scruples restrained the Gauls, passed through their midst to make sacrifice, and after sacrificing returned in safety to the Capitol? At the present time the category of sacred ambassadors would be represented by those who in the interest of religion set out to attend some ecclesiastical convention. Next let us examine the case of those who, although they bear the name of ambassador, have in fact been sent for some other purpose.

CHAPTER IV

The Ambassador Who Is a Spy and a Traitor

There are certain ambassadors who are really sent for the sake of spying, and in order to do this with greater safety, they are protected by this sacred title. But do they obtain safety? I do not think that the elder Africanus, by his action in dismissing unharmed some spies who did not even have the title of ambassador (he even insisted on their seeing everything), has in any way determined the law of the question for us who are investigating not deeds of magnanimity, but the law. Yet in dealing with an ambassador who is a spy, I do not believe that severity can be carried beyond the point of refusing to admit him, or if he has been admitted, of expelling him. At any rate, Antiochus treated with royal courtesy an ambassador of this type who had been sent to him from Rome, as I have already related on the authority of Polybius in the *Selections on Embassies*. The Roman dictator Postumius saved certain Volscian ambassadors who had been detected and convicted as spies, because in his opinion (so Dionysius writes) it was more important that consideration should be shown to the title of ambassador which they claimed, than that suitable punishment should be meted out to them for the crime of which they were undoubtedly guilty. There is the similar case of the King of the Ethiopians, which Herodotus speaks of in his *Thalia*. And we can say the same of him who, as Cicero tells us in his speech *For the Manilian Law*, was sent by Mithridates to Pompey. Pompey thought that he was an ambassador, but others judged him a spy, and I agree with them. For why would the King have sent ambassadors to Spain? In order to make a league with Pompey against the Republic, as he is said to have done with Sertorius? That he was a spy is adequately established by the single consideration that Cicero does not even attempt to prove that he was an ambassador. These examples are sufficient to establish the view which we have expressed, since that which is approved not only by upright and experienced men but also by the majority is probably sound. Our view is all the more worthy of approval in consideration of the fact that if, on the mere suspicion that one had come not as an ambassador but as a spy, it should be lawful to deprive him of the title of ambassador and to degrade him, the door would be

Many instances in
Appian 11
Livy 30

Bk. 6

Aristotle,
Topica 3

- flung wide open to the unscrupulous for outrages against all ambassadors. Could not Ariovistus have pleaded this excuse for that savage deed which Caesar mentions in the first book of his *Commentaries* on the *Gallic War*? Could not Pope Julius have justified the deed which he is said to have perpetrated in the case of the ambassador of the Duke of Savoy? Could not the treatment of the ambassadors of David by the King of the Ammonites, as recorded in the Holy Scriptures, be excused by such a pretext as this? All these ambassadors were harshly treated because they were regarded by Ariovistus, the Pope, and the Ammonites respectively, not as ambassadors but as spies. There are other examples also. Those mentioned are cited by me, in spite of their referring to real ambassadors and not to spies, in order to show that if a different law should be established on the question, an easy way would be opened to the unscrupulous for circumventing the right and title of embassy. But I wish to press my point still further. It will be asked: How can a man be convicted of having been sent as a spy, if his title of ambassador is above suspicion? Because he is detected doing everything in the manner of a spy? That, however, does not justify at all the inference that he is not an ambassador, even though we may conclude that he is an unscrupulous ambassador. But the question of an unscrupulous ambassador is distinct from our present inquiry, in which we are considering the case of one who, no matter what title he may bear, is not an ambassador at all. We are discussing the problem whether, in spite of the title, we should treat him just as if he were not an ambassador. I maintain that we ought to deal with him as with an ambassador, because the title of ambassador can not be proved spurious. For how can it be proved spurious, if the person sending him does not betray him and he does not betray himself? Nor should we believe that the Volscians or the others I spoke of were convicted either by their own words or by those of their people. For it would have been scant wisdom on the part of Postumius and the others to show regard for a title which the enemy themselves had betrayed. Of course, if it were established that a man had come as a spy, I should hold that the title of ambassador, insomuch as it was spurious and false, was worthless. Spurious titles are rejected everywhere. But I maintain that such a point cannot be established. Therefore, as the jurist Paulus says: "In this question not law but proof is lacking." Proof other than that furnished by the confession of the person sending the ambassador

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Guicciardini 11

Sam. 2. 10
Appian 23

71

D. 26. 2. 30

or of the ambassador himself, I will not accept, because there can be no other. But let us examine another question of this kind. What if an ambassador should be sent for the sole purpose of hindering, baffling, and deceiving the person to whom he has been sent? This is a very frequent occurrence, like the case of the spy of which we have just spoken. For what would you call the herald of Alcibiades to the Selibrians? Plutarch has the story. What would you call the ambassadors of Fritigernus to Emperor Valens? Ammianus relates the incident in his thirty-first book. But why do I give the list of these men who are so very numerous? What, I ask, is the law? We have the precedent of Caesar who detained, and on the other hand Gall. 4 that of the Gallo-Grecians who dismissed, such an ambassador. Of the envoy of this type sent to the latter by Perseus, Livy speaks in his forty-fourth book: "The treacherous envoy not being harmed (a contingency which Perseus had scarcely hoped for)," et cetera. He calls the envoy treacherous because he deceived the Gauls more than once. Do you not think that a solution of our present problem is furnished by the opinion of Perseus? The fact that he had no hope shows that he knew that the law was against his envoy's being dismissed unharmed. Who would deny that negotiations which are at least reprehensible are carried on by such ambassadors? Martius, the Roman ambassador, was severely criticized by his fellow-citizens, because when 72 on an embassy he practiced wiles of this kind. The Romans insisted that justice and honor should be preferred to injustice and expediency. They called such wiles "Greek" or "Punic": "Greek cunning and Punic craft," are Livy's phrases. But this is not enough to justify one in inflicting upon the ambassador a punishment more drastic than dismissal. For why should the law in this matter be different from that which we have set down for spies? Someone may add that just as ambassadors are not infrequently deceived, so they also ought to be able to deceive others. But I say that the deception of ambassadors is unjust. Moreover, the objection which a certain critic made to my position is ridiculous. What, he asked, is the use of a shrewd ambassador, since there is no fear of anyone deceiving him? This is just the same as asking why we carry arms, since anyone who kills us is liable on a charge of murder; or why we lock up our strong-boxes, house, and shop, since one who carries off anything against our will can be punished for theft; and other questions of the same kind. To end this chapter, the opinion I wish to express is that I approve of the Bk. 42

action of the Gauls, but seriously disapprove of that of Caesar, who undoubtedly took the step because he saw that it was both conducive to safety and expedient to have in his power so many Germans of such distinguished lineage. And yet, if we adhere to this opinion as well as to the one given above, I am afraid that complete immunity for delicts has been proposed. If a spy can not be punished but only dismissed, are we not treating the spy just as he wished? For he, after having spied on everything, which was the sole purpose of his mission, would naturally wish to go home. It is the same with the ambassador. Having completely deceived the sovereign, what else would he wish than to return to his own prince, his task now successfully accomplished? Perhaps, then we ought to distinguish between cases, ruling that one who has actually played the spy and trickster ought not to be let go. On this principle Perseus had good reasons for being so alarmed about his envoy, who, as I have said, was guilty of double dealing. But on the other hand, if we are considering the case of ambassadors who have just arrived (as in the Caesarian example), I do not see why they should not be dismissed, or rather why they should not be refused admittance. It is certain that international law does not provide that punishment be meted out to them, but only that their actions and the circumstances of any action of theirs should be considered. Is Caesar's action, then, subject to unqualified criticism? It is, unless there was some other reason which made it fully justifiable. But as a matter of fact there was another excellent reason, for by violating the truce the Germans violated international law. Nor was this (I shall point out elsewhere that it alone would not have been sufficient to justify his action) the only offense committed by them; Caesar had before this suffered from the trickery of these same embassies. I say "the same," since the case was the same and the parties in the dispute were the same, although the personnel of the embassies varied from time to time. This is my opinion, no matter how much more harshly Cato (according to Appian) judged Caesar.

CHAPTER V

The Forbidden Embassy

Now, let us see if the right of embassy protects one who, though an ambassador in name and fact, arrives at a time when embassies have been forbidden by the person to whom he is accredited. This happens with great frequency, as is shown by the numerous examples in Livy, Dionysius, Ammianus, Herodotus, and Thucydides. For instance, the Aetolians were notified that any ambassadors who should come would be treated as enemies. The ambassadors of Perseus were warned that they would approach at their peril. Coriolanus threatened that he would treat as spies any persons who appeared, and we learn in the first book of Heliodorus that ambassadors, who under similar circumstances had been ordered to depart, were threatened with the death penalty. So the Athenians, the Achaeans, the Romans, and those highly revered characters, Coriolanus and Theodosius, all resorted to this right of prohibiting embassies. There is therefore such a right. As a matter of fact, unless one had the privilege of forbidding the coming of embassies, considerable confusion would be introduced by this alone into international law, which insists and orders that control over one's own affairs shall be final and inviolable. Otherwise a man (I mean the ambassador) would be established as an enemy in enemy territory, against the will of the ruler of the country, and one prince could impose upon another the necessity of having in the dominions subject to him an individual who was not subject to him. But we need discuss no longer a question that is so clear. Nevertheless, one ought to realize that prohibition should be based on some reason, for without reason the eternal laws of nations can not be changed or abolished by anyone. Hanno in an address to the Carthaginians justly censured Hannibal for not admitting Roman ambassadors. "Your fine commander," he said, "has refused to admit to his camp ambassadors coming from allies on behalf of allies; he has nullified the law of nations." Commenting on the fact that Roman ambassadors barely escaped by flight from the attack of the Syracusans, Livy says that the situation implied a suspension not only of the laws of peace but also those of war. The reasons which justify a refusal to admit embassies can not be covered by a single explanation. There

Livy 22, 23, 41, 42
Dion. Hal. 8
Amm. 29
Herodotus 9
Thucydides 3

74

Livy 21

Bk. 24

75

Livy 41
Appian in
Selections
Dio Cassius in
Selections

was no validity in Hannibal's excuse that he was engaged in such vast operations of war that he had no leisure to listen to embassies, and that he could not, among so many barbarous tribes, guarantee their safety. Is the right of embassy unknown to barbarians? Have not embassies been heard in the midst of far greater operations? Perhaps the Achaeans did well in resolving not to admit ambassadors or envoys from kings, since they perceived that their presence might cause them trouble. The Roman Senate ordered the ambassador of Pyrrhus to notify his King not to send embassies with gifts from that time on. To the Carthaginians, who were refused admittance, the Senate said that it was not in accordance with the custom of the Romans to treat about peace while the enemy remained in Italy. For it was undoubtedly about peace that these Carthaginian ambassadors came, and Hannibal was still in Italy. The second book of Thucydides contains an account of a similar act on the part of the Athenians. I believe that the right of embassy can be denied to a man of impious character, and in my opinion the atheist Theodorus, when Lysimachus forbade him to return to his court, was not felicitous in his reply: "I shall not return unless Ptolemy sends me again." The story is related by Diogenes in his life of Aristippus. If the transaction of business is interfered with, if the dignity of the state is slighted, if danger of any kind arises from the privilege of sending ambassadors—these and similar conditions are without question adequate reasons for prohibiting the exercise of the privilege; and of this the examples given above afford confirmatory evidence. But if it is permissible to issue such a prohibition, does it not also follow that any who are sent are deprived of the rights of ambassadors? If it is permissible to forbid the approach
76 of ambassadors, it is not permissible to send them. Moreover, that which is not permitted has no legal basis. So when the women delegates were confronted with the necessity of going to Coriolanus after that threat of his (they feared very much that he would detain them), it was not enough for them to shield themselves under the right of embassy and base their hopes on it; they appealed also to the right of suppliants. And we shall rightly apply the name of suppliants to those who come in spite of the fact that they have been forbidden. In my opinion their sole title to safety is found in the fact, familiar to us from numerous sources, that suppliants are under the protection of God. This is specifically stated by Dionysius, and is attested also by that Roman, who in exhorting the Aetolians to surrender says: "You

will put the Romans to the shame of doing violence to suppliants." Livy 36

Undoubtedly in most cases they are not injured. It is asserted in one or two passages in the first book of Cicero's *De inventione* that the world in general approves of showing pity to suppliants, and that cruelty to them is essentially barbaric. But it must be said that the Athenians, to whom the ambassador did not come as a suppliant, refrained from violence entirely from fear. For, as we have shown, they had the right of taking action against him. What then shall we think of the Ligurian state which, when the Roman ambassador refused to obey an order to go, killed his slaves and wounded the ambassador himself? He barely escaped by flight; whereupon the Romans declared war, and, seizing the country, reduced it to servitude. But on the question of the rights of the case, we, who are not acquainted with all the underlying causes of the incident, are not in a position to give any answer. In the uncertainty I should be inclined to give an opinion against the ambassador, because I am bound to state that the Ligurians 77 had a reason for spurning the embassy, and therefore it was permissible for them to repel by violence the ambassador who was trying to force his way in. Their contention, we are informed, was that they were under no compulsion to give their reason to the Roman ambassador. So all they did was to say that they had a reason. They deemed it sufficient if later on, with a view to averting suspicion of having violated the law and avoiding the disaster of the war that was perhaps impending, they should state what their reason was.

Polybius in
Selections

CHAPTER VI

One Who Has Injured the Ambassadors of Another Should Not Hope for the Maintenance of the Right of Embassy in the Case of His Own Ambassadors

But what if embassies have not been forbidden, and yet he who sends one has at some time given cause for the denial of the right of embassy to his ambassadors? Let us suppose that he has done violence to the ambassadors of him to whom he himself is now sending an embassy. There is the precedent of the elder Africanus, according to which the rights of embassy should none the less be maintained. He sent home uninjured the Carthaginian ambassadors who were returning from Rome and who had been driven by a storm to his camp, in spite of the fact that they had been adjudged enemies by the Senate, and the Carthaginians had been guilty of a flagrant crime against Roman ambassadors. "Scipio," Appian says, "when asked what ought to be done with these ambassadors, answered, 'nothing like that which the Carthaginians did.'" And though Livy differs from Appian in certain details, he also positively attributes this action to Scipio. He says that Scipio, notwithstanding the fact that the Carthaginians had violated not only the pledges of the truce, but also in the case of his own ambassadors the law of nations, stated that he would do nothing unworthy of the institutions of the Roman people or of his own standards of conduct, and sent the ambassadors home. In confirmation of this conclusion the following reason can also be adduced: that if an ambassador can be punished on account of the crimes of his sovereign, it does not seem possible for any embassy at all to survive in times of war, when on both sides numerous offenses of the utmost seriousness always occur, and unconscionable atrocities are committed. Moreover, does the case of a single ambassador, injured perhaps by words only, furnish a better reason for taking vengeance on the ambassador of the wrongdoer than the many disasters which Publius Cornelius Lentulus relates were inflicted upon the Romans by the Carthaginians? They broke many treaties and many oaths. Hannibal alone destroyed four hundred Roman towns, brought devastation upon all Italy, was guilty of every form of appalling cruelty and treachery, and slaughtered

three hundred thousand Roman soldiers, not to mention many other atrocities. Yet after all this the Carthaginians and Hannibal had the right of sending ambassadors to the Romans, and their ambassadors were accorded the usual privileges. Would it have been right to withhold these, if so much as a finger had been laid upon a Roman ambassador? Besides, what reason is there for punishing the guilty in the person of the innocent? But neither the precedent of Scipio nor the reasons mentioned shake me in my belief that the right of embassy does not hold for the envoy of a sovereign who has violated that right. To withhold rights from one who has violated them is believed to be not a violation but a rendering of justice. Francis I, 79 the French king, when he heard that his ambassador was being detained by Emperor Charles, retaliated by detaining the ambassador of the Emperor. Belisarius detained the ambassadors of the Goths until they released the ambassadors of his master Justinian. There are plenty of examples of this kind, but why should I enumerate others, since the very precedent of Scipio that I have cited can be ranged on this side? In order to prevent harsh treatment of the ambassadors, Africanus lays emphasis on the institutions of the Romans and on his own character. Both the former and the latter were wholly on the side of clemency and magnanimity. But let us hear Polybius also, who wrote the history of the same period. He says that on the question of the safety of the ambassadors Scipio responded that they ought to consider not what would be the right penalty for the Carthaginians, but what action would be in accordance with Roman dignity. This response shows what was right, and it is rights that we are now investigating. Furthermore, Xenophon in the fifth book of his *Anabasis* expressly confirms this. "Who," he asks, "would dare approach with a herald's wand those whose heralds he has put to death?" It is not, he says, safe. The so-called reasons woven into our discussion are not valid, for war falls within the scope of international law, and neither war nor war-like deeds violate that law. Wherefore, no matter how many ills the Romans suffered at the hands of the Carthaginians, they could not, inasmuch as they suffered them by the right of war, have said that these involved any violation of international law; and it follows that they themselves were bound not to violate it, as they would have done if, on account of those disasters, they had done violence to the ambassadors who were afterwards sent to them. But how can he be called innocent who is

Guicciardini 18

Procopius,
Bellum
Gothicum 2

Bk. 15

- 80 the personal representative of one who is notoriously guilty? If this were possible, it would never be permissible to take action against the subjects of a sovereign on account of an offense committed by the sovereign, and there would be no war. A more plausible argument is contained in what was said about the breaking of oaths and treaties,
- Bk. 17 for, as Appian says, neither friends nor foes have any confidence left in men guilty of such violations. But not even for this reason ought the right of ambassadors to be impaired, because the very purpose of the institution of their office is to provide a means for the improvement of evil conditions. In fact, no matter what the circumstances are, we see in history everywhere that this remedy has been retained for evils of all kinds. But if one should scorn to use it in dealing with another, there is no reason why that one could wish and desire the other to use it for his benefit. He should rather expect acts of hostility and enmity, such as destroy utterly all laws of war and all intercourse, just as the Athenians once passed a decree against the Megarians, who were said to have been responsible for an Athenian ambassador's death. A war of this kind, in which not even heralds have safe conduct, has been carried on, we know, not only at other times but also in our own age by the Rhaetians in their struggle with the first Emperor who bore the name of Maximilian. But this does not pertain to the subject that I am discussing. I lay down the principle that ambassadors should not be given safe conduct when going from a prince of this kind to another whose right of embassy has been violated. Under other circumstances no violence should be done to ambassadors, not even if other laws of nations have been violated, for none is to be compared with this in majesty and prestige. Therefore, if the Germans had not been guilty of the other offenses of which I spoke in
- 81 the fourth chapter, I should think that Cato's opinion was just when he argued that Caesar should be surrendered to them because he had detained their ambassadors, even though they had violated the truce. Unnecessary also (if any act is unnecessary in making a thing sure) was the agreement between the Goths and the Romans that, if any injury should be inflicted while the truce lasted, safe conduct was none the less to be given to ambassadors. This is related by Procopius in the second book of his *Gothic War*. And here I repeat what I wrote in a former chapter, that suppliants still retain their rights, even if their prince has done violence to the ambassadors of the prince to whom they go as suppliants. In this connection I have

Plutarch,
Pericles
Alciati,
Parerga 8. 18

pleasure in quoting Appian's statement about the elder Africanus, that he granted absolute security to the Carthaginians who came to him a second time as suppliants. These suppliant ambassadors used the holy symbol of the wand which even Achilles, in spite of all his threats, is supposed to have revered. Nor in fact is it remarkable that the same right should be granted to heralds as to suppliants, for both are under divine protection. So where ambassadors would be exposed to danger, we read not infrequently that heralds were sent to secure safe conduct for them. In regard to the inviolability of ambassadors coming as suppliants, even though they were from persons who had flagrantly violated the right of embassy, there is an example in the fourth book of Agathias, while in Plato we find this notable sentiment: "The greatest of all sins not only against citizens but also against foreigners is the sin against suppliants. For God is the all-powerful guardian of the lowly suppliant." Now let us turn to other questions.

Bk. 8

Eustathius
on Iliad 1

Livy 34, 45, 37

Leges 5

Have Rebels the Right of Embassy?

Plutarch,
Dion

Just as he who has shown contempt for the rights of embassy has been judged by us unworthy of having those rights observed for his advantage, and is believed to have deprived himself of them through his own offense, so it certainly ought to be understood with even greater definiteness that no one can acquire those rights by an offense. Rebels, therefore, that is persons who secede from those under whose authority they are, should not dare to send any embassies to those against whom they have revolted. An example of quite recent date is furnished by the Spanish king's action toward the Belgian ambassadors. Dionysius also threw into prison the ambassadors of the Syracusans, when that state, forcing its tyrant to take refuge in the citadel, asserted its liberty. In this connection I should find difficulty in distinguishing between tyrant and king, because in the field of our inquiry the rights of both may be regarded as equal. Each of them is master, and law perhaps is the basis of each one's sovereignty. A king rules over his subjects because they want him to do so, a tyrant in spite of them. Yet a tyrant is none the less a prince, for we know of princes who have acquired their power by arms and warfare, and who for the most part rule over their subjects in spite of them. And I will introduce here the simile which Plato uses for the same purpose in his *Politicus*: Just as we give the name of physician both to those who cure persons against their will, and to those who cure them at their own request, provided they practice medicine scientifically, so we shall not distinguish between tyrant and king in our present discussion, nor on any other occasion, unless some new difficulty should arise. On this account I cannot help laughing at those who are always vociferating that the Turkish Emperor is a tyrant, and that he has no right to rule. And I know that

Politica 3. 10,
11, 12

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Aristotle is on my side. Further, the arguments that can be adduced to the contrary concerning the reprehensible character of despotism and the flimsiness of its legal claims, together with other considerations of the kind—these, in my opinion, wholly lack a substantial basis. For if some unavoidable upheaval results in a despotism, why should not he who feels himself worthy to rule be accepted? Why should he not

seize the prey that is at his mercy? So I can not help being a little angry at George Buchanan, who compares those two most just princes (he himself acknowledges their justice), Hiero of Syracuse and Cosmo dei Medici, to two robbers who, though habitually fair in their division and disposal of the spoil, have acquired it by wholly unjust methods, and so are robbers. Not to say anything about the other claims of the great Duke of Tuscany, how, I ask, was Cosmo a robber, if he brought under his control and dominion a state which was calling for a ruler? It is absurd to suggest that a man of his distinction ought to have waited for his state to be made subject to a barbaric or foreign ruler, or should have resigned the tiller to those who would forthwith have exposed the ship to the dangers of reefs and storms, when he himself was the only one who knew how to keep her safe in port. Besides, the argument urged against despots that they do not rule by right, because by right their sovereignty should be taken away from them, lacks all semblance of validity. So far as legal right is concerned, neither the Turk should rule, nor should the Roman people have ruled in antiquity, for their position is precisely the same as that of the tyrant. We know that one argument and another can be advanced against our opinion, and in fact the very title of tyrant is highly offensive. But my side of the case is the stronger. However, I am not arguing in favor of the tyrant, but am endeavoring to show 84 what rights his subjects have in dealing with him, and I say that they are without the rights of embassy, just as they are without them in dealing with any other sovereign. On this account I am not inclined to think that Constantius could have been blamed if he had punished, as he threatened to do, the ambassadors whom Julian, who had been made joint emperor by the Gallic army, had sent to him. For both Julian and the army were rebels. So it must have been for some other reason that Theodosius received the ambassadors of the tyrant Maximus, and likewise those of the tyrant Eugenius; he was not constrained by any law. Hotman exposes his ignorance when in his *Famous Questions* he makes the statement that international law holds for rebels. For the fact that we find the jurist Paulus asserting that rebels are enemies to the extent of losing their citizenship, is far from establishing the contention that they should be regarded as falling within the scope of international law. In reality it clearly proves the contrary. For if they are enemies, or suffer loss of status only to the extent of forfeiting citizenship, assuredly they are not such as to be thought

History of
Scotland

Amm. 21

Rufinus,
Hist. eccl. 10. 26

Zosimus 4

entitled to consideration and in the possession of rights. We should, however, be careful not to think that the conclusions stated here apply to any rebels or deserters other than those who, as we have said, were subject to the authority of someone else. For I assert that the right of embassy still belongs to those who have abandoned an alliance, a treaty or even a friendly vassalage. How often did the Volscians, the Latins, the Spaniards, and innumerable others rebel against the Romans? Yet their ambassadors were thought to be so safe under the law of nations that they set out upon their missions with great
85 frequency and without fear. They retained the right of embassy both because they possessed it before their revolt (which was not so in the case of subject peoples), and because their lawlessness along other lines did not involve its forfeiture. Subject peoples, however, can not acquire it by revolt, because rights are not acquired by offenses.

Liv. 5, 6, 29, etc.
Appian 13

CHAPTER VIII

The Right of Embassy Does Not Hold in the Case of Brigands

Neither brigands nor pirates are entitled to the privileges of international law, since they themselves have utterly spurned all intercourse with their fellowmen and, so far as in them lies, endeavor to drag back the world to the savagery of primitive times. In that age, as you know, men passed their lives in the manner of wild beasts, and each one carried off what fortune offered to him as prey, trained to use his strength in accordance with his own impulses and to live for himself alone. In those days, as Thucydides observes, to be a robber was an honor rather than a disgrace, and it is on this account that Mercury is praised by so many writers, especially Homer. How can men who have withdrawn from all intercourse with society and who, as Florus says in his third book, have broken the compact of the human race, retain any privileges of law, which itself is nothing else than a compact of society? We must therefore pay heed to Cicero who, in the third book of his *De officiis*, says that the rights of war are not operative in the case of those who are the enemies of all. "Robbers," Livy says somewhere, "rather than recognized enemies," etc., and elsewhere he writes that some brigands were executed and that in dealing with them the rights of war had not been conceded as in the case of others. Florus in his third book writes to the same effect about runaway slaves. This being so, what is the meaning of Caesar's statement in the third book of his *Civil War*, that this very right of embassy was actually granted to brigands? For unable to gain Libo's consent to send, with his cooperation, ambassadors to Pompey, he, with a view to putting his opponents to shame, directed that these words should be shouted out: "Are not citizens allowed to send ambassadors to citizens—a privilege which is possessed even by runaway slaves from the defiles of the Pyrenees and by brigands?" I believe that Caesar is thinking of the Celtiberians and Iberians, who, Appian tells us, were conquered by Martius, and of Viriathus and his followers, whom the same author mentions and everywhere calls robbers; and he is speaking of embassies sent by them to Roman generals. But if Caesar was thinking of them, let him and Appian show that they were robbers, for I

Lucr. 5

Thucydides 1

Hymnus in
Mercurium
Plato, Rep. 1

Bk. 34

86 .

do not believe that they were. And yet if they were, not even that reason influences me, for I am considering the law upon which actions are based, not the actions themselves. Were embassies sent by Spartacus and his like? The tradition is that Crassus was invited by him to make a treaty, but refused on account of the shame of the thing; I have not heard of any embassies being sent. What of Tacfarinas, the African robber? He sent ambassadors to Emperor Tiberius (to such a pitch of arrogance, as Tacitus remarks, had he attained), but Tiberius flew into a passion and asserted that Tacfarinas had grossly insulted him, insomuch as he, though a brigand, attempted to negotiate with him as if he were a combatant or an enemy recognized by the state. If a brigand has this right, why does the Roman Emperor fly into a passion? Why does he complain that he has been grossly insulted? Why does Tacitus make the charge of arrogance? The explanation of these things is found in the fact that brigands are not entitled to these privileges. Therefore I am surprised at the statement of Hotman that international law holds for fugitive slaves and brigands; that even the right of embassy holds, as indicated by the exclamation of Caesar. Just as if Caesar would have claimed any basis of law for that act, or as if it would have been seemly for him to make such a claim! And as if his purpose was not rather to arouse ill-feeling against the Pompeians, because safe conduct for embassies (it was this that Caesar wanted) had been granted to those to whom it ought not to have been granted, while it was refused to those who, no matter by what name the Pompeians called them, were fellow-citizens. Hotman asserts that his view has the support of the opinion of the jurist Tryphoninus; but I appeal to the testimony of the same jurist for the corroboration of my opinion. Let us look into the matter. Tryphoninus says that, if the owner does not come to claim property that has been stolen from him, the person with whom the brigand has deposited it should under international law restore it to the brigand, robber, or thief. But if the owner should come, it should be restored to him. Who will deduce from this that robbers are entitled to the privileges of international law? There is no robber where there is no owner to convict him of robbery. Not even the jurist applies the term robber to him when no owner appears, but says: "He who has given the property ought to receive it"; and later: "The things should be restored to him who has deposited them." This is manifestly the meaning of what he wrote at the outset, that the other phase of his in-

Appian 12, 13

Ann. 3

87

D. 16. 3. 31

investigation lay in the view that law exists only between those who have made an agreement and that no outsider can be brought in. The opinion that in international law property deposited should be restored, is based on the understanding that one is dealing with a depositor and not with a robber, for the same jurist says that property ought not to be restored to a robber. "The property," he says, "was taken away from him because he was a criminal." It is the 88 assumption of the rôle of owner that technically creates the robber. Otherwise, he rather would be the robber who did not restore the deposit to the depositor. Now let us sum up briefly. When one is proved a robber, rights are not accorded to him. But one is never proved a robber except when the owner is brought into the case. Therefore, the extension of privileges to him before the owner has D. 1. 18. 13 appeared is due to the fact that at the time he is not a robber. In our investigation a magistrate or any public authority could rightly assume the rôle of owner.

CHAPTER IX

Does the Right of Embassy Hold in Civil Strife?

But let us consider still more carefully the question involved in the reproaches which Caesar directed against the Pompeians—whether the right of embassy ought not to hold in civil strife. Undoubtedly the sending of embassies under such circumstances is fraught with the greatest danger. For example, the ambassadors of the Senate and of Vitellius suffered violence at the hands of the Flavians. Vitellius himself acted in the same way toward others. The ambassadors to the German legions (Tacitus tells the story in the first book of the *Annals*) were barely saved at the altars of the gods. The ambassadors whom Sulla sent to negotiate about peace were assaulted by his adversaries, and an ambassador of Marius was murdered by the followers of Sulla. Antony flogged an emissary of Augustus. So extreme is the fury (as Tacitus somewhere observes) which characterizes actions in civil war. Moreover, as each faction claims the title to the state and regards its opponents as enemies of the fatherland, it usually adopts this pretext to arrogate to itself the right of treating ambassadors harshly, taking the position that they are subjects and rebels. Presently the outcome of the war will determine the situation, the vanquished being generally regarded as enemies. Unquestionably this is so in fact. So far as law is concerned, I should make a certain distinction in settling the question. When in the strife each faction lays claim by word and deed to the whole organization of the state or to half of it, the right of embassy will certainly hold between the combatants, and Caesar had good ground for the reproach which we have mentioned. But if there are some who lack the daring or the power to claim so much for themselves, in their case I believe that neither the right of embassy nor any other laws of nations ought to hold. Could Catiline have maintained ambassadors at Rome? Sallust does indeed write that Manlius, one of Catiline's generals, sent ambassadors to Quintus Martius, the Roman commander, and that they returned to Manlius unharmed. But Manlius was not yet a public enemy, and in this book I am discussing not deeds, but legal opinions. We are quite aware that fugitive slaves, brigands, and all others to whom we have denied the right of embassy could furnish examples comparable to the

Tac. Hist. 3, 1

Livy 85 (perioccha)
Val. Max. 9. 8

Plutarch,
Otho
Dio Cassius 41

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ambassadors of Manlius. Lucius Florus in his third book tells us that ambassadors were sent by Apuleius. Cicero, therefore, has good grounds for exclaiming in his *Eighth Philippic* in regard to the ambassador of Antony that the gates of the city ought not to have been opened to him. I approve of Cicero's words, and contend that the ambassador, if it had been thought desirable, could have been put to death at Rome, not because Antony was an enemy, but because he was an enemy of such a kind that international privileges ought not to have been granted to him. Why did they put to death in the state-dungeon the young son of Fulvius, who at the time of the Gracchan disturbance was sent by his father to the Senate to negotiate about peace? Plutarch describes this as a deed of exceptional cruelty, and Paterculus in his second book calls it a crime without parallel. But I am not influenced by the opinions of these historians, who would show more wisdom if (and this is the course which learned men are more likely to approve) they would refrain from judgments of this kind. Why do they call this execution a crime? They say that the young man had committed no wrong. But this is false, for he was with his father and the rest of the rebels on the Aventine, and he undertook an embassy in their behalf. Appian's account is that the young man was arrested, and after sentence of death had been pronounced was executed. We are told that he had been warned when he first approached that embassies were henceforth forbidden, but paid no attention to the warning. The order for his arrest was accordingly issued on the ground that he was no longer an ambassador. This supports the assertion which I made in my fifth chapter. But I shall strengthen this and my former conclusion by adding a single argument to each. The former I shall reinforce as follows: Since the right of embassy holds in a conflict with enemies with whom the fight is to the death, still more does it hold in the case of those with whom the struggle does not involve the destruction of the state, and who are not like foreign enemies. Such men are merely adversaries, and this is what Plato calls the Greeks when engaged in civil war. The right of embassy, therefore, will certainly hold in their case. If the right of embassies holds when the civil code of the nations (to adopt the expression of Cicero) has been annulled by war, why should it not remain among citizens, even when the law of the state has been thrown into confusion? Appian narrates in the first book of his *Civil Wars* that em-

90
Oros. Hist. 5, 2

Bodin,
Methodus
historica 4

Appian 13

Menexenus
Rep. 5

Cic. Fin. 3

91

Octavius, and between other adversaries; in his second book, that ambassadors passed between Antony and Lepidus and the assassins of Caesar; in his third book, between others; and in the rest of his work he gives additional examples of the same kind. My second conclusion I shall strengthen in this way: Subjects have not the right of embassy for they are bound by the law of the state. Moreover, rebels are subjects, for no one ever frees himself by a crime from the obligations of the state. They have, therefore, no right to send embassies. Let us now take up the case of subjects.

CHAPTER X

Ambassadors Should Not Be Sent by or to Subjects

That subjects have no right of embassy with their ruler is evident from the fact that we can not be on an equality with potentates and rulers. Now an ambassador assumes equality with the sovereign to whom he is accredited, and he is not bound by civil regulations or by any civil ordinance of that sovereign, as we shall soon see. Very clear evidence on this point is furnished by Livy, who writes that certain colonists were refused what they asked for, and at the same time were warned by a communication from the Senate to depart from the presence and sight of the Roman people by leaving the city with all speed; and they were also informed that the right of embassy, which was framed for foreigners and not for citizens, would not protect them at all. In his twenty-ninth book he writes that the ambassadors of certain colonies were detained, and that this action was in accordance with a decree of the Senate. We read also in Agathias that some Mysian ambassadors, who acted in an insolent manner towards the Roman prefect, were soundly cudgeled and sent back half dead to their people. The Mysians, who on this account killed the prefect, are called criminals, and because they subsequently put to death some Roman ambassadors, are denounced as desperate malefactors and offenders against international law. These things illustrate what I said in my fourth chapter, that a sovereign by no means forfeits the rights of his ambassadors by inflicting injury upon the ambassadors of others, provided he had the right and the authority so to do, as undoubtedly the Roman prefect had in the case of these ambassadors of subjects. I have still three notable instances to narrate. The first is this: Lorenzo dei Medici detained the ambassador of the Duke of Urbino on the ground that he (the ambassador) was a subject of the Pope, for whom Lorenzo was acting. Was this just? However that may be, Perseus sent an Illyrian exile as ambassador to Gentius, King of the Illyrians. I do not disapprove of Lorenzo's act, for one can not repudiate the country from which he is sprung any more than he can his own prince. As regards exiles, although the question whether they cease to be citizens is a subject of debate among our authorities, it is absolutely settled that if they

Bk. 6

Hist. 3

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Guicciardini 13

Livy 43

D. 50. 1. 6, 18

C. 10. 39. 4

return to localities from which they have been excluded, their obstinacy and disobedience render them liable to punishment, and the title of ambassador can not help them. The Illyrian either was not a subject of Gentius (for the country of Illyria was of vast extent), or the fact that he suffered no harm must be referred to some other cause than legal considerations. Nor is there any doubt but that in the matter of embassies the rigor of legal procedure is generally relaxed. Again, perhaps Gentius received the exile as ambassador. If he received him, he could not afterwards deny him the rights of
 93 embassy. This point can be urged against dei Medici also, for apparently he received the subject of the Pope as ambassador. Further, Francesco Sforza, Duke of Milan, was not in a position to exercise sovereign rights in the case of the ambassador of the King of France, whom he allowed to perform the duties of ambassador in his domain; and the plea of sovereignty was not sufficient to justify his putting him to death. Nor is my conclusion invalidated by the
 D. 49. 15. 5 ruling in regard to a certain Menander that has come down from our authorities, the substance of which is that just as a man's native country can not against his will resume its rights over him, if he has become a citizen of an enemy country, so resumption of these rights is impossible in the case of an exile also. This is unsound, for the exile commits an offense in setting out on the embassy, and he is in a position to realize that his action in coming into the other state was anything but pleasing to the prince who drove him into
 Bk. 44 exile. The second case is this: Livy narrates that the heralds of Perseus were detained by Publius Aemilius to whom they had been sent. What are the facts here? Why did Perseus, vanquished and stripped of his whole kingdom, presume to usurp the rights of kings? The same Roman paid no attention to a letter of his in which he called himself king, and it was on that account that he subsequently refrained from using the title. Who would go today as ambassador to the King of Spain in behalf of Antonio, who has been expelled from the kingdom of Portugal? As a matter of fact, the Roman people as well as other powers would have demanded that such an ambassador be surrendered to them with all his property, as we may see from the *Lucullus* of Plutarch, the first book of Xenophon's *Hellenica*, and other works. The last case which I wish to speak of is the fol-
 Bk. 36 lowing: The consul commanded the Aetolians, who were surrendering through ambassadors, to give up certain individuals to him.

“Then” (I quote from Livy), “the leader of the embassy said: ‘The 94
 purpose of our surrender is not to relinquish our liberty, but to intrust Livy 36
 our interest to you, and I am sure that lack of foresight is leading you
 into error when you impose upon us demands that are not in accord-
 ance with the custom of the Greeks.’ To this the consul replied:
 ‘By Hercules, it makes no difference to me what action the Aetolians
 regard as satisfactory from the standpoint of Greek custom, pro-
 vided I exert my authority in the Roman way over those who have
 been given up. Unless you obey my commands speedily, I shall
 immediately order you to be cast into chains.’ Then he gave orders
 that chains should be brought and that lictors should surround the
 ambassadors.” Are we to approve of this action? In the *Selections*
on Embassies we have the same story, wherein Polybius tells us that
 the Romans present were overwhelmed with shame that ambassadors
 who had been sent by a national assembly should be subjected to such
 treatment. I am also of the opinion that the action was harsh, be-
 cause if one adopts the policy of entrapping an ambassador by phrases
 and keeping him entangled, what becomes of good faith, which is the
 essence of the law of nations and of embassies? Polybius tells us that
 when the Senate was consulted on this question, it replied that the
 Aetolians should either surrender unconditionally or pay a thousand
 talents. When, however, the Aetolians asked for an explanation of
 what was involved in surrender, not even this was vouchsafed them,
 and we are informed by the historian that war was renewed against
 them. From this it is clear enough that while the Aetolians had been
 entrapped by the communications made to them, the Roman Senate
 had not followed up the deception, and had not shown any inclination
 to oppress them after they were deceived. For such actions are not in
 accordance with the dignity of sovereigns. And so (as I remember
 hearing) Moritz, Duke of Saxony, when Emperor Charles, opposing
 the liberation of the Landgrave, suggested a number of subtle interpre-
 tations of the case, said: “I do not want you to interpret the terms of 95
 the agreement like a lawyer, but as an emperor.” But this is enough
 in regard to the relations of the ambassadors of subjects with their
 own prince. What of their relations with foreign sovereigns? My
 opinion is that such ambassadors can be sent, unless the matter is one
 which involves the rights of their state. In the latter case subjects
 certainly can not, without consulting their own prince, send ambassa-
 dors to another. But if there is no situation of this kind, my state-

- D. 50. 16. 16 ment of the case is reasonable, since a prince does not control his subjects' private affairs, and on all sides we see princes making contracts with the subjects of others and transacting every kind of private business. Subject states, moreover, are regarded as private individuals. I do not think, however, that ambassadors of this class should be granted the privilege of immunity from the operation of civil ordinances. Reasons for this are available from our previous discussion. But what if the business should involve state rights? We should be obliged to take the opposite position, for we ought to consider not so much those who transact the business as the business which they transact and the person whom they represent. As a matter of fact such ambassadors are acting in a public cause and by the public authorization of their sovereign. That they bear the name of, let us say, Paduans, makes no difference, if they are transacting business in the interest of their sovereign and on his instructions. They merely retain the name of Paduans (in this case a public, not a private, designation) with the permission of the Venetian Republic. This is enough about ambassadors who are sent by subjects. Furthermore, we maintain that persons who are sent to subjects, either one's own or those of others, are also without the noble right of embassy. For although it does not lie within the competence of subjects to come to any decision in regard to the ambassador of their prince, the ambassador does not on that account participate in the higher right. Even the right of commanding, which we concede to him, is in our interpretation of the situation nothing else than the power to frame, in his capacity as representative, the orders of the prince sending him. Moreover, ambassadors should not be sent to the subjects of others because subjects certainly can not give to others what they do not possess themselves. But if such ambassadors should come, my opinion is that they should be presented by the subjects to their prince. For who would tolerate the action of Considius, who ordered the ambassador sent to him by Caesar to be put to death? For my part, I think that Caesar acted imprudently in sending an ambassador to one who was under the command of Scipio. Nevertheless Considius does not escape the brand of savage audacity. In this connection I ask, what is the meaning of Plutarch's statement in his *Alcibiades*, that an agreement was made with the satrap, Pharnabazus, that Athenian ambassadors should have safe conduct to his King. Have subjects the right of prohibiting ambassadors from coming to their sovereign?
- Hirtius,
Bell. Afr.

We suggest that the agreement was that the ambassadors should actually be escorted by the satrap—as Xenophon reports in the first book of his *Hellenica*—and our reason is that generals, prefects of frontiers, and similar officials do have that power. So Dionysius reports in his eighth book, and elsewhere in more than one passage we read of permission being obtained from Roman generals to send ambassadors to Rome. In the forty-second book of Livy the ambassadors of Perseus are told not to come to Rome in the future; that if they did come, none of them would be allowed to pass through Italy; they were to be sent to the consul, who would be in Macedonia. 97 Further, we say that the action of the Latins toward the ambassadors of the Volscians (Dionysius in his sixth book is our authority) was undoubtedly reprehensible. They threw into chains those who had been sent to them to seek an alliance, and delivered them into the hands of their enemies at Rome. Now the Latins were not subjects of the Romans, and so were under no obligations to take such measures. Livy in his second book comments on the action and the reason for it, saying that the ambassadors suffered violence at the hands of the Latins. Certainly no similar example is furnished by any ally of the Romans in embassies of this kind.

CHAPTER XI

The Embassies of Criminals

I will close my discussion of the causes why the rights of embassies are not granted to ambassadors by dealing with two questions upon which I have not yet touched. One of these concerns excommunicated persons; the other relates to the man who has committed some offense against a sovereign prior to his undertaking an embassy to him. The latter, even if he is a criminal himself, and the envoy of the former, though they are under accusation, safely and properly set out on embassies. As regards excommunicated persons, we have an example of no very ancient date in the Venetians, whose ambassadors many could not bring themselves to receive, because they had been placed outside the communion of the Church by Pope Julius. Moreover, they say that there are extant some epistles of Cyprian and a decision of the Council of Sardis to the effect that ambassadors and letters from heretics ought not to be received. This view is supported by the account which Polybius in his fourth book has left us of the ambassadors of the Cynaethians, that they were expelled with ignominy everywhere (so vicious and foul were they considered), and that the Mantineians after their departure purged their city and all the places in the vicinity with expiatory rites and sacrifices. These things did happen. What legal justification can we find for them? We are well aware of the fact that embassies of the Venetians were received by other sovereigns of the Christian faith at the very time to which we have referred, and that nowadays ambassadors sent out by Protestants are received by Catholic princes, and vice versa. There is also interchange of embassies with the Mohammedans. I am, therefore, very strongly of the opinion that the rights of embassy ought not to be disturbed on account of religious differences. The first reason which has brought me to this conclusion is that this interchange is the universal practice now, just as it was the regular practice in the olden time. I have spoken of those who profess Christianity. But it is also a well-known fact that the Persians, who in the opinion of the Turk are heretics, have the right of embassy with them. Why should I mention what everybody knows, that the Jews have received other than Israelite embassies? Nor is there any occasion for my

Guicciardini 8

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stating that adherents of the Greek Church have availed themselves of this right with members of the Latin Church, and vice versa, though each church regards the other as schismatic and heretical; and heretics have used it with Catholics, and vice versa. These are all well-known facts. The second reason which inclines me to this conclusion, is the following: The law of religion does not exist between man and man, but between man and God. Our communion with God functions through religion, which covers the relations of man with God. For religion is the science of divine worship and the habit of its observance, which is the tie that binds us to God, as Plutarch reports the definition of the philosophers, and as Piccolomini quotes from Plato. In my opinion the definition is sound. But this communion and this law do not exist between men, unless you apply to communion the same interpretation as in natural law, that it is characteristic not only of men but also of all brute beasts. For just as that law does not owe its existence to being used as a basis of judging between brutes and men, but to the fact that both men and brutes have impulses toward it, so the law of religion exists among men, not because it binds men to men but because all profess religion toward God. Why do we hesitate? It is clear that this is the situation, for religion is not of human origin, nor did the pagans ever refer it to any source but the gods. Communion therefore does not fall within the scope of international law, for it is based on nature. This being so, why are the laws of nations broken by reason of religious differences? Why do embassies perish? The third reason for my conclusion is based on facts that have been established by others. Wars ought not to be started on account of religion. Others have proved this, and I assume it as proved. Accordingly, no matter what difference in religion may exist, the rights of embassies remain unshaken. The chain of argument is as follows: If the right of peace can not be abolished on account of such a difference, still less can the right of embassy, which remains in force even when the other has been abolished, and this (not to become prolix) is my opinion. So let sovereigns be careful of their actions when they use the pretext of religion in dealing with embassies, for I am confident that the facts which I have adduced in support of my view have overwhelmed the arguments advanced against me. The instance of the Cynaethians does not contribute anything to the case, for they were vicious toward both individuals and nations. For the second phase of my question examples are also available. Plutarch

Cic. Leg. 1

99

Plutarch,
Aemilius;
Piccolomini,
Phil. mor. grad. 4. 35

100

Plutarch,
Phocion

relates that Demades, the ambassador of the Athenians, was put to death by Antipater, and we know from the account in Polybius' eighth book that Pelopidas was the victim of similar injustice at the hands of Alexander of Pherae. These ambassadors were hostile to the kings to whom they went, having reviled and injured them. Polybius charges Pelopidas with imprudence for going to an enemy. For my part, even if he did act imprudently, and even if those who send undesirable persons of this type are equally imprudent, I should still think that both Antipater and Alexander acted barbarously and unjustly. Of this they are clearly convicted by the policy—so different though the case was similar—which Germanicus adopted toward the son of Segestes, as recorded by Tacitus in the first book of the *Annals*.

D. 48. 2. 12

The jurist Venuleius also holds that not even a provincial ambassador ought to be accused of a crime committed at an earlier date. That the former incident is attributed by Tacitus to the clemency of Germanicus, and that the doctrine of Venuleius has been subject to more than one criticism, I am aware. But what is the actual situation? Who disputes the principles that an ambassador ought to be safe even with the enemy? And who disputes this, which is certainly sound, that we ought not to take vengeance on a private individual when serving in a public capacity? You should not, when in office, follow up a

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Bks. 39, 42

wrong which you have suffered in private life, for that, as Livy says more than once, is a bad precedent. What did Hadrian after becoming Emperor do to those who had been his enemies when he was a private citizen? He said to them: "You have escaped," meaning that those matters were no concern of the Emperor. What of the King of France? When he was Duke of Orleans he suffered certain wrongs. After he became King, when some persons urged him to take vengeance, he replied: "It does not become the King of France to avenge the quarrels of the Duke of Orleans." The reasoning is as follows: A person in public life does not avenge wrongs done to him when he was a private individual; therefore, wrongs done by a man when in private life should not be avenged upon him after he has become a public personage. Moreover, we ought to remember that consideration of a man's public position should prevail, because it is the more honorable, and it is regarded as a definitely established principle that the more honorable overrides the less. No estimate, therefore, of a person's private character can be given as an excuse for his punishment when an ambassador. For it is a man's public capacity which is the

dominating element, and it is this which is injured; nor can it be separated from his private capacity so as to escape injury. This circumstance of inseparability has resulted in more than one man receiving, as a benefit of the combination, indulgences which are due only to the fact that public and private functions are inextricably fused in him. The jurists recognize this. Such is my opinion, and I would venture to affirm that it is right, since in the question under discussion a man's assumption of the more distinguished rôle always originates with someone other than himself. If it were otherwise, my definition might seem somewhat flimsy. I foresee objections, but those who are able to devise them can also appreciate my drift and will understand the response to the objections. Why should I protract the discussion for the sake of the others? In regard to Guicciardini's statement about Verulanus, the Catholic bishop who was ambassador to the Swiss, I should not consider a different analysis necessary. My opinion is that he was detained unjustly. The more equitable course is to refuse to admit ambassadors accused of crime.

D. 40. 8. 10
Jason on
C. 6. 20. 9.

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Guicciardini 14

CHAPTER XII

The Right of the Free Embassy, of the Embassy of Courtesy, and of the Resident Embassy

So far we have reached the causes which are held to invalidate the right of embassy; and we have also shown what persons are not qualified to send or receive ambassadors, or with safety undertake embassies. But it remains for us to examine the case of those embassies, if we believe that such exist, which a prince can refuse to receive, not on account of any specific cause or person, but by reason of their intrinsic character. I am of the opinion that the free embassy, the embassy of courtesy, and the resident embassy are of this kind. For whoever desires to go abroad on a free embassy does not really have in mind the advantage of his country (the term itself proves the contrary, and so we have confined this embassy within definite limits), but his own advantage, as Ulpian and Alfenus write. Nor is there any reason why a prince should be allowed to send into the dominions of others persons who, though exempt from the civil law of those countries, confer no benefit upon them. Further, since I find that this type of embassy is not universal and is in general criticized on numerous and substantial grounds, I am led to believe that a prince can, without any special cause, refuse to receive such an embassy when it comes to his kingdom. For that this kind of embassy does not fall within the scope of international law may be perceived from the fact that Cicero in his *De legibus* (those who mention the Twelve Tables in this connection are absurd) advocates its abolition, and Emperor Claudius did abolish it altogether. Moreover, the same conclusion is evident from the fact that the laws of nations are said to have had their origin in the necessities of the human race, and no necessity is involved in an embassy of this sort. I am of the same opinion about the embassy of courtesy, for who will attribute to necessity the admittance of ambassadors who come only for the purpose of showing some courtesy? Common sense tells us that neither favor nor devotion can be bestowed on one against his will. Otherwise the favor would be an injury. "If a favor," says Plato in the ninth book of his *Laws*, "has been conferred in a way that is inconvenient and inopportune, our opinion is that its author has inflicted an injury." So far as the resi-

D. 50. 7. 1;
4. 6. 42

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Cic. Leg. 3
Dio Cassius 58

dent embassy is concerned, in regard to which I submit the very same analysis, I add the action of Henry VII of England. He, they say, never allowed ambassadors of this kind to stay in his kingdom. The underlying reason of all these conclusions is that the abolition of these embassies would not injure the intercourse of nations in the least.

CHAPTER XIII

The Right of an Embassy Which Has Been Received

Having finished our discussion of the right of sending an embassy, we proceed straightway to an exposition of the rights of ambassadors who have been received, that is, those actually engaged on an embassy. At the beginning of this book we have revealed the
104 fundamental principles of the present question, and now we shall furnish a number of illustrations. We have stated that the right of the ambassador is such that he is safe even in the midst of the weapons of his enemies. If war suddenly breaks out between two
D. 26. 1. 15; princes, their ambassadors retain at each other's court unrestricted
29. 1. 13; liberty, which is not the lot of others who, if caught in the country
50. 7. 18 (17); of the enemy of their prince, become his slaves. At such a time, if a
49. 15. 12 sovereign does not want ambassadors to remain in his kingdom, they are ordered to depart. Guicciardini gives examples of this in his first and sixth books. Nor is the duty of the prince confined to precautions that the ambassador shall not be injured by him, nor through any plan of his, but he must take care that he shall not suffer injury
Guicciardini 1 from anyone else. Pope Alexander VI, therefore, was right in ordering the dismissal of the French ambassadors who had been captured at Rome by their enemies, the Aragonese; and yet the Pope was on the side of the Aragonese. On the other hand, the sovereign ought to use every means of anticipating the ambassadors, if they should plan any mischief. An excellent example of this is furnished by Syphax, who is said to have repressed Carthaginian ambassadors
Appian 6 who were hatching a conspiracy against Scipio and his suite. Far from being devoid of sound reason, these conclusions have a substantial basis in the tradition that the prestige of a prince is impaired if ambassadors are injured at his court. This arises from the fact that ambassadors are entitled to the good faith of the state and the prince, and he who does violence to an ambassador violates the good
Baldus on faith of the state and the prince. "If anyone," so runs the law,
Decretl. 1. 29. 1
D. 48. 6. 7
105 "should be convicted of striking or injuring an ambassador, envoy, or any member of their suite, he is liable under the Julian law concerning an attack on the state." In fact, insomuch as he has offended against
D. 50. 7. 18 international law, it is sound jurisprudence that for his offense he

should be, and generally is, surrendered to the enemy and to the sovereign of the injured ambassadors. Those who assaulted the ambassadors of the Apollonians were surrendered to the Apollonians; Livy 15, 18 those who assaulted the ambassadors of the Carthaginians were surrendered to the Carthaginians; and the man who killed the ambassador of the Roman people was surrendered by Demetrius. This we know from Polybius in the *Selections*. Yet it is also true that if the ambassadors so desire, the sovereign of the offender may fix the penalty by which the injuries done shall be avenged. Thus the Roman Senate condemned Saturninus to death, after the ambassadors of Mithridates, upon whom he had inflicted grievous injuries, had secured his indictment. This is the most sacred right of ambassadors. That it is international law also has been both stated and proved. Moreover, it is well established that if ambassadors are to be tried, they can be tried only under international law. The immediate inference from this is that certain acts, which are offenses in the case of persons subject to the civil law, are not offenses in the case of ambassadors; and that the acts of the latter are to a certain extent on a different basis. Moreover, the same will hold true in regard to contracts and everything else. But in some cases it may be less advantageous for an ambassador to be under the exclusive jurisdiction of international law than if he were under civil law also. For I hold that an ambassador can not, according to his whim, at one time deny and at another invoke the law of the state. It would be contrary to all the principles of international law that he should have the power to play fast and loose with legal procedure; and undoubtedly an ambassador would have an unparalleled opportunity for doing so, if this privilege were granted him, since many things which could not be done under one code could be done under the other. Accordingly, if this option were open to ambassadors, they would be able to establish the validity or invalidity of anything, and this would constitute a gross evasion of the law. All these statements will gain in clearness and definiteness by the introduction of illustrative examples. For instance, one who has added to a will something to his own advantage is guilty of an offense according to civil law, but as this is not an offense under international law, it is not an offense in the case of an ambassador. To plan and plot the death of a sovereign is a heinous crime in civil law; it is a crime under international law also, but not on the same grounds. This question we shall examine at greater length. In civil law there are many

Appian 11

Diodorus
Siculus in
Selections

106

D. 48. 10. 6

- transactions which require more than two witnesses; in international law more than two are never required. Therefore in accordance with what has been said above, if an ambassador evades a contract to which only two witnesses have been summoned, although by civil law more are required, judgment will justly be given against the ambassador on the basis of international law, because he would be able to get judgment against his adversaries on similar grounds. Otherwise, would
- D. 2. 2. 1 you not consider it a glaring example of injustice? For is an ambassador to have the power of determining the validity or invalidity of a transaction? Imagine a contract under the terms of which an ambassador assumes obligations to certain individuals, while by the same instrument others assume obligations to him. When confronted by those to whom he is under obligation, can he interpose the objection that by civil law the number of witnesses is insufficient, but when confronting those who are under obligation to him, claim that by international law two witnesses are sufficient to legalize the contract? But
- 107 enough of examples; the fuller discussions given in the sequel will prove the whole case still more effectively. Here only one thing should be added: that just as we have said that it is usual for those who do violence to ambassadors to be surrendered, so also ambassadors who have committed any offense against international law are surrendered, or are punished with great severity by their own nation. For example, the fecial priests announced that the Fabian ambassadors ought to be surrendered, because while engaged on an embassy they fought against the Gauls. Subsequently, when they were about to be punished by the Romans themselves, they evaded justice by a voluntary death. However, not only their bodies but also their goods were surrendered, and this was the ruling approved by the judgment of the wise Goddess, who checked and censured Tydeus when he was inflamed with a desire to fight against the Thebans, to whom he had gone as ambassador. We find, therefore, that neither Agesilaus nor Clodius nor any of those whom we shall mention in the next book were justified in even planning hostile acts against the man to whom they had gone as envoys. For what is the difference between an injury done openly by arms and one contrived by treachery? But it is evident that these are not the only rights of an embassy that has been received; it is also recognized that no hostile measures can be taken during the continuance of the embassy. So the ambassador of Pharnaces at the court of Eumenes (the story is from Polybius in the
- Livy 5, 6
Plutarch,
Numa
Appian in
Selections
- Iliad 5, 10

Selections) used to say that it was absurd for him to remain and discuss peace, while at the same time hostile deeds were being done and savage reprisals suffered. For this reason, as I have said above, 108 resident ambassadors are dismissed when war starts between their sovereigns. But we must examine the manner of an embassy's reception, for in this way we shall gain some information about the right which we are investigating. The dismissal of resident ambassadors is due to the fact that, since they are appointed for the purpose of showing a courtesy more than anything else, they can not function at all after war has begun. Likewise, if before war breaks out an embassy comes on the chance of adjusting the points of disagreement, it will be wrong to begin war then. It may have been under such circumstances that the ambassador of Pharnaces spoke. For if a certain course has been mutually agreed upon, we can not, without incurring censure, abandon it except by mutual agreement, or unless we inform our adversary about our change of mind. Furthermore, even when war is actually going on, there will be a cessation of hostilities during the stay of an embassy which, sent on this very business, has been admitted, for the act of admission seems to constitute a sort of truce. But this is a precarious right, and we know that some who have relied upon it have come to grief. Wherefore, stipulations in regard to a truce are generally expressly stated, even if peace has been agreed upon by the generals of the armies, and embassies of the sovereigns have come to ratify it. Certainly if an embassy has set out but has not yet been received, I am sure that he who proceeds with his military operations can not be censured for injustice. Curtius has an example in his ninth book. Obviously it is not in the power of an enemy to prescribe and define beforehand the time for war.

Livy 32
Xenophon,
Hellenica 1
Livy 30

If the Right of Embassy Is Spurned

But if the right of embassy is treated with contempt, the great disasters which overwhelm those who have spurned it are enough to show how strictly its observance is enforced. The whole race of the Ammonites perished miserably at the hands of David, because they had done violence to his ambassadors. Josephus in his fifteenth book records that all the Arabs were slain or captured by Herod for the same reason. The Athenians, after maltreating the ambassadors of Darius, saw all Attica devastated and that wonderfully fertile region terribly ravaged. To what straits the Lacedaemonians were driven for an offense of this kind is known from the fact that they wished to send to the Persians one of their most distinguished citizens, in order that the King might exact vengeance from him for the treatment of his ambassador, and that the Spartan state might at last be free from the miseries with which it was afflicted. Shall I speak of Corinth? "Because their ambassadors," says Cicero, "had been addressed contemptuously, our forefathers decreed that Corinth, the light of all Greece, should be completely destroyed." He is right here; but in the third book of his *De officiis* he is not right when he states that under pretext of expediency a crime was committed in the sack of Corinth. For is it not probable that the right of embassy was violated? Florus in his second book reports that the ambassadors were certainly addressed in an insulting manner, though it is doubtful whether they were subjected to physical violence. As a matter of fact, however, the violation of this right at Corinth was something more serious than a matter of words. Polybius says that the ambassadors were expelled from the theater with hisses and insults; Dio writes that, terrified by the sound of the tumult, they escaped death by flight; Strabo tells us that they were pelted with mud; Livy and Asconius narrate that they were beaten. Why should I mention the Phocians, the Tarentines, the Megarian Adenystians, and similar communities, and enumerate the injuries which to their sorrow they inflicted upon ambassadors? Aeschines, Polybius, Dionysius, Dio, Florus, and Appian, as well as Pausanias and Plutarch, recount these facts. That other king of the Romans, Tatius, because he failed to

Sam. 2. 10, 12

Herodotus 7

Cic. Manil.

Polybius and
Dio Cassius
in Selections

Livy 51 (periocha)

110

punish the injuries inflicted by his subjects upon the ambassadors of the Lavinians, brought a plague upon his city and himself suffered a shameful death. Let us hear what Cossus said and did to Tolumnius, King of the Veientians, who had put some Roman ambassadors to death: "Is this," he said, "the man who has broken the compact of the human race and violated the law of nations? Now I, in the conviction that the gods want something sacred to remain upon earth, shall slay him as a victim and offer him to the shades of the ambassadors." He killed him, cut off his head, and carrying it on a spear-point, routed the rest of the enemy's forces through the terror caused by the slaughter of their King. How often has this crime been cast up to the Veientians? Subsequently, when they replied to some Roman ambassadors that, unless they left the city and country immediately, they would treat them as Tolumnius had treated their predecessors, the result was the destruction of their most opulent city. But it would be tedious to enumerate additional instances. I could speak of Ariovistus, Perseus, Aristodemus, Dionysius, Cloelius, Domitian, Antony, Jerome, Hippocrates, Epicides, Mithridates, Britomaris, Gentius, Julian, Khosroo, Magnentius, and other kings and emperors, as well as of Queen Teuta. She, if we are inclined to believe Florus, ordered Roman ambassadors killed, not by the sword, but like victims of sacrifice with an ax. In the case of all these the sacrilegious treatment of ambassadors was either punished with the utmost severity, or was given such unfavorable publicity that the loss of prestige which resulted may be regarded as more serious than all the rest of the damage. 111 A long history of the tragedies and accusations involved in this subject is furnished by the Aequians, the Fidenates, the Antiates, the Pomptini, the Memaceni, the Ligurians, the Carthaginians, the Syracusans, the Sybarites, the Tyrians, the Arcadians, the Britons, the Boiogalli, the Senogalli, the Venetogalli, the Gallograeci, the Mysians, and others who have violated, or treated with disdain, the right of embassy. These accounts have been handed down by Polybius, Livy, Caesar, Curtius, Appian, Plutarch, Dionysius, Dio, Athenaeus, Zosimus, Procopius, Agathias, Nicephorus and others. O mighty Rome! During your whole history was action of this kind ever taken by you, though you received countless embassies? And if anything of the kind was done within your jurisdiction, did you ever fail to make amends? You sentenced Saturninus to death. You decreed that the Fabii should be surrendered. Even if both these measures were blocked through the

Dion. Hal. 2
Plutarch,
Romulus

Livy 4

111

influence of the people, the justice of the Senate's action (in whose jurisdiction the cases fell) stands out clearly. So far as the Fabii are concerned, amends were subsequently made for the whole affair by the measures adopted for a new trial. In the case of Saturninus also there is reason for excusing the Roman people. Why did not the Senate rather decree that the man should be surrendered in accordance with the regular law? He who was surrendered was not surrendered to certain death; there was hope—great hope, I may say—of his being set at liberty. See how the man surrendered to the Romans for the terrible crime of having killed the ambassador Gnaeus Octavius was liberated by them. The young Romans surrendered to the Carthaginians for injuring their ambassadors not only did not come to any serious harm, but were set free. However the case may be in regard to Roman virtue, the tradition which we are now stating is a matter of fact: those who spurn the right of embassy pay heavily for their contempt. Look at Rome herself captured and burned, because the Fabii were not surrendered; for everyone attributes the disaster to that cause. In regard to injuries done to ambassadors, hear what Juvenal says in his *Sixth Satire*: "Heavy lies the penalty on him who violates the herald's wand." Hear what Ammianus says: "Ever wakeful is the eye of justice, and the dread avengers of ambassadors." Also: "The everlasting might of justice avenges the wrongs of ambassadors." And Appian in the *Selections*: "In this way" (he has just recounted the disasters that befell the Senones for their acts of violence to the Roman ambassadors) "Nemesis punished the Senones." Nemesis, who is called by Plato the envoy of divine justice, here as an envoy, with fine appropriateness, avenges envoys. Mighty therefore is the sanction which gives sanctity to the right of embassy.

Appian 11

Polybius in
Selections and
Dio Cassius

112

Plutarch,
Numa
Livy 5

Livy 28, 30

Leges 4

CHAPTER XV

The Suite and Paraphernalia of Ambassadors

It will not be irrelevant if at this point, before proceeding farther, I say a few words about the suite and the paraphernalia of ambassadors. I am very strongly of the opinion that these also are safe-guarded by the right of embassy. A similar equality of privilege prevails in other walks of life. For example, we see that the same privileges are granted to the attendants of scholars as are conceded to the scholars themselves. That members of the suite of governors, proconsuls, and imperial procurators are granted the same exemptions as the magistrates themselves, is stated by Paulus in *Digest*, 50. 5. 12, and by Hermogenianus in *Digest*, 27. 1. 41. The latter says: "Members of the suite of those absent on state business, provided they are within the statutory number, are excused from a guardianship assigned to them either in their absence or on the eve of their departure." In *Digest*, 4. 6. 32, Modestinus says the same thing, that members of an ambassador's suite are absent on state business. Ulpian, as we have recorded, says that those who had assaulted or in any other way injured either ambassadors or members of their suite, were liable to indictments on a charge of attacking the state. To this evidence add the fact that it was the policy of the Athenians and Lacedaemonians to provide for the suites of ambassadors just as for the ambassadors themselves, as we have narrated in the third chapter. Remember also what we have quoted in the first book, that it was the custom to give presents to members of the suite and to register their names, just as in the case of the ambassadors. A further proof is furnished by Scipio's plan of adding to the ambassadors sent to Syphax some associates who were to spy upon the King's camp. He certainly seems to have thought that members of the suite were entitled to the same security as the ambassadors. Let us consider also the formula: O king, do you make me your royal messenger—me and my utensils and my suite?" This shows us that the right of ambassadors holds not only for the suite of the ambassadors, but also for their effects. Obvious as this is, it becomes still more

C. 12. 10. 2
D. pr. 9

Add what
Macer writes
in D. 1. 18. 16

Plutarch
Livy
Polybius

- evident from the fact that free seats were given to embassies, a custom which demonstrates that everything connected with ambassadors should be inviolable, and protected by special privileges. What
- 114 does the power of privilege attached to the person of ambassadors amount to, if it does not apply to their effects also? And so, on an occasion when I, acting under the directions of the illustrious Earl of Leicester, made some extempore remarks on the right of ambassadors in the presence of a number of influential and distinguished men, it was with nice discrimination that Arthur Atey, a man of great learning and wide range of information, said that he was of the opinion that the goods of ambassadors could not be seized, nor their houses entered for the purpose of seizing their goods for debt. This is true, though the royal power can take any other means whatsoever to protect creditors from loss; and the royal power, you must know, alone has control in such a situation, since neither suits nor executions fall within the scope of international law. Why no other course of procedure can be adopted in such cases (I referred to this point also on that occasion) there is no necessity of my explaining. Only one difficulty embarrasses me in this discussion: Do these privileges hold for all the members of the suite of an ambassador, and whom are we to include in the suite? Surely not all the attendants, followers, menials, and hostlers. There would be no trouble in solving the problem, if as in ancient times their names had been entered in public records and a definite number had been fixed. But under the circumstances it is difficult. Those seem to be called members of the suite who assist the ambassador, and so it is possible that we ought not to include the rabble referred to. Yet I am of the contrary opinion. For if we grant privileges in the case of all the possessions of ambassadors, why don't we grant them in the case of these persons also? Africanus, when ambassador, took with him five
- 115 slaves. Ought the right of embassy to have been denied them because they were slaves? The term "suite" should be taken in a broader sense. So far as the personnel of the suite is concerned, therefore, I am of the same opinion as in regard to the ambassadors: each one, as the saying goes, will receive according to his measure. And to what I have said about the ambassador who is a subject I here add a highly lauded precedent of Themistocles bearing on the suite. He by public decree ordered the arrest and execution of the interpreter who was assisting the ambassadors sent by the King of the Persians,

D. 47. 10. 1, 15
Alciati on
C. 10. 19. 2

Athenaeus 6

Plutarch

on the ground that he was using the Greek language at the behest and command of barbarians. I am convinced that the interpreter had been an Athenian subject; otherwise Themistocles himself would have been in the highest degree barbarous and unjust.

CHAPTER XVI

The Contracts of Ambassadors

- Now let us come to the contracts of ambassadors, about which there is a sort of agreement (and enough reasons for this have been mentioned) that international law only should be followed. But I hold that an ambassador should be subject to legal procedure on every contract which he enters into during his embassy. The purpose of this is to prevent ambassadors from having the power (as Julian says) of carrying home the property of others, or to preclude the possibility of a situation (and this is the well-known reasoning of Paulus) in which no one would be willing to make a contract with them, and they would be in a certain sense barred from commerce. The latter reason is especially clear; the former is derived from that natural law, which prescribes that it is in the interest of justice that no one's increase in wealth should involve loss and injury to another.
- 116 In the matter of his house (for resident ambassadors are not provided with one), an ambassador must give the owner a guaranty against possible injury, or admit some one else to possession. Such is the substance of a decision handed down by the jurists, and although it was rendered in regard to a provincial ambassador, a thorough examination of the principle shows that the law is applicable to ambassadors of higher rank also. Likewise, if the time for bringing a suit is about to expire, a judgment may, after investigation, be given against an ambassador, which shall provide for legal or some similar procedure, on the basis of which action may subsequently be taken against the ambassador, where and when it is possible. It is permissible for a contract to be made with a man who is not yet an ambassador, for the fact that an appointment to a public office intervenes ought not to bring a permanent loss upon another. Again, an action will be granted against an ambassador, if it was agreed that the obligation was to be met within the period of his embassy, as Africanus writes. Except for these and similar reasons, an ambassador is not liable for any previous act, not even if he has made a contract at the place of his embassy, or has entered into an agreement to pay debts antedating his embassy, unless in the latter case he has added that he would pay at the place of his embassy. This reconciliation of
- D. 5. 1. 25
D. 4. 4. 24;
16. 1. 11;
26. 7. 12
Add D. 1. 18. 16
D. 50. 7. 4 (3)
D. 5. 1. 2. 4

the views of jurists who have disagreed is made by Accursius. Likewise, even if in the place where he afterwards comes on an embassy he has entered into an agreement to abide by the decision of an arbiter, the arbiter must not be compelled to give his opinion, nor the ambassador to proceed with a suit which he began at an earlier date. Not even a right of action *in rem* is granted against an ambassador, even though it is based on present possession. The reason for these opinions must be that it has been decided that the cause and the origin of the business shall have first consideration, as is handed down by Hermogenianus. It was this which brought me to think that I ought to listen to Accursius in his reconciliation of the views of Gaius and Julian. Again, right of action against an ambassador is not conceded to those who are legatees, even if the inheritance should be entered upon by the ambassador, and the contract (as it may be called) assumed during the period of his embassy. Perhaps this is due to the belief that his act is all the more in need of support because it is not wholly voluntary. Now I come to another point. We have said that ambassadors of inferior rank who have been indicted should be tried by civil law. The traditions mentioned above which have come down in regard to them we have extended to ambassadors of superior rank. But even if one's transactions with ambassadors of higher rank are subject to international law only, there is no injustice involved in the system. For ambassadors in making a contract are not supposed to renounce their privileges, nor should any relief be granted to those who may find themselves embarrassed because they can not sue an ambassador by civil law. No relief, it will be remembered, is rendered to those who make a contract with any other privileged person. He who makes a contract with another either is or ought to be aware of his status. And yet this may be of advantage not only to the ambassador but also to his opponent, as is shown by the example which we used as an illustration in the thirteenth chapter. But, to state here one principle which is of very wide application, the royal power, as it is called, will itself give judgment in every business and law suit in which ambassadors are concerned, for the royal power is international law.

D. 5. 1. 8;
13. 5. 5

D. 5. 1. 24

D. 39. 5. 33
117

D. 5. 1. 26, 27

D. 50. 17. 19

D. 1. 2. 2. pr.

Dion. Hal. 10

CHAPTER XVII

The Judge of Ambassadors

118 Let us work out in detail what we have already implied in regard to the judge of ambassadors. For if we have shown that a man can be sued in the place of his embassy, we certainly seem to have implied that the judge of the place is also the judge of the ambassador. I now state this explicitly, supporting my position by the following reasons. It is regarded by jurists as an established principle that a foreigner is tried by the judge of the country where he has committed an offense against the law, or made a contract or transacted some other business. For he makes himself subject to a jurisdiction to which under other circumstances he is not subject. Even in the case of an ambassador this opinion has been given in a rescript by the deified Marcus, and by Julian, Papinian, Venuleius, and Paulus in their writings. The authorities are unanimous; and although it is about ambassadors of inferior rank that they are speaking, the same principle applies to ambassadors of higher rank. For just as the former become subject to the civil magistrate to whom they were not subject previously, so the ambassadors of superior rank become subject to the magistrate of international law, that is the sovereign. Is it not clear that those principles, on the basis of which we have pointed out that an ambassador is subject to legal obligations in the country of his embassy, are strong enough to make the sovereign of the country the judge of the ambassador also? What is the use of making an ambassador subject to legal obligations unless there is someone who can pronounce judgment in regard to them? What is the use, as Pomponius says, of having law in the state, unless there are magistrates who can administer the law and through whom results can be obtained? This has been stated in the *Oeconomicus* of Xenophon, in the seventh *Epistle* of Plato, and in an unusually fine passage in the sixth book of the latter's *Laws*. Are not these principles applicable to offenses against the law? Assuredly if they hold in the other cases, they must hold also when the law has been infringed. Peter, the ambassador of Justinian, when accused of adultery, did not refuse to be tried by Theodatus, King of the Goths, in whose country he was serving, and he was acquitted of the charge. The Lacedaemonian ambassadors,

D. 1. 18. 3, 13

D. 1. 2. 2. 13

119
Procopius,
Bell. Goth. 1

when thrown into prison at Athens on a charge of having caused a riot, did not have recourse to a demurrer touching the place of trial, but denied the deed, and having been found innocent, were discharged. On the other hand, a Venetian ambassador, found guilty of this crime not many years ago, is said to have been beheaded at Milan. The Frenchman who was put to death at the same place was, according to the version of some, convicted of homicide, not of plotting a revolution. Nor do I regard these acts as unjust. Moreover, laws for the ambassadors of higher rank also and penalties for those who do violence to them are included in our civil law. And so if the sovereign is legislator for the ambassador who is at his court, he will be judge also. Shall I cite those laws? Here they are. There is *Code* 4. 63. 4, *Code*, 4. 41. 2, and *Code*, 4. 61. 8. In the *Code* there are all the laws of the Emperors Honorius, Theodosius, Marcianus, Gratian, Valentinian, and the elder Theodosius. The fact that ambassadors are ordered by this last law to pay certain taxes is not unjust, and Aristotle teaches us that this is done elsewhere also. The freedom of an embassy ought not to become lawless license. Moreover, we know that certain things are forbidden to ambassadors which are not generally prohibited. Dio mentions in the *Selections* that provision was made to prevent anyone borrowing anything from certain Cretan ambassadors who were suspected of bribery. The ambassador of Justinian says that guards were placed over him (this was perhaps due to similar reasons), without whom he could not even take a drink of water. Why should I mention other cases? If it is permissible for the sovereign to make laws for the ambassador which do not impair the right of embassy, why should he not be permitted to enact a penalty for those who have broken the laws? Just as if it would be permissible to make an incomplete law, but not a complete one! In this connection I was once asked by the learned jurist, Grif-fin Lloyd, whether my opinion in regard to the judge would be the same in a case that was not clear, that is, when it was a matter of controversy whether the ambassador committed an offense or not, or did anything of such a nature that, according to the opinions mentioned above, he would be subject to the jurisdiction of the sovereign in whose country he was performing the duties of ambassador. I replied that my opinion would certainly be the same. This is in accordance with the regular practice in all other cases where an investigation is made to

Xenophon,
Hellenica 5

C. 2

120

Procopius,
Bell. Goth. 1

Ulpian, fragm.
tit. 1

D. 5. 1. 2, 5; 50. 7. 6⁽⁵⁾ determine whether a judge is qualified or not; and in the particular contingency of the question being raised whether the ambassador in the case can or can not be sued, Ulpian and Scaevola have clearly given **this very decision.**

CHAPTER XVIII

If an Ambassador Should Conspire against the Sovereign to Whom He Is Accredited

Furthermore, certain questions arise in connection with the crimes and offenses of ambassadors; and it is apparent that the manner in which these should be dealt with by the royal power is so vaguely defined that we must include in our discussion several important problems. And since in dealing with crimes and penalties we are handling a larger subject than in the case of contracts, it will be appropriate 121 for us at this point to consider some forms of offenses and crimes committed by ambassadors. We shall treat first the one which surpasses all others in enormity: if the ambassador should conspire against the sovereign in whose country he is serving as envoy, what ought to be done with him? Undoubtedly the question is a most difficult and troublesome one. I discussed it, however, before the illustrious Earls of Leicester and Pembroke and other learned men of noble birth. Beginning with a quotation of the fifth law of the title of the *Code*, "In regard to the Julian law of treason," which belongs to the reigns of the Emperors Arcadius and Honorius, I said that I believed that an ambassador was not held by it, since the principle of this civil law was that in so atrocious an act the very attempt itself and the design to injure ought to be punished just as if the act had been committed. But this is not a natural principle; it is clearly contrary to nature, since it judges as done what has not been done. International law is based on natural principles which have been implanted in all by nature, and which are so well known that they need neither argument nor art to establish them. This is not a principle of that kind. Further, that can not be regarded as a principle of international law, which implies that he who controls a thing by which other things are controlled, controls the latter also. In fact, I could review many similar principles, the invention of which is due to the subtle interpretation of civil law, and which are not consistent with the simplicity and what I may call the primitive character of international law, by which alone our ambassador ought to be judged. So in the type of offense which we are considering, the Romans judged that the ambassadors of the Tarquins ought not to be put to death. Livy says: 122

Jason on
D. 41. 2. 3

Bk. 2 "Although their actions seemed to justify their being regarded as enemies, international law prevailed." We read in Appian's work on the Punic wars that the ambassador of Syphax, who plotted the assassination of Masinissa, suffered no harm other than being charged with the crime. I should speak of the ambassadors of the Allobro-

Cic. Cat. 4
Appian 14

gians who, according to the accounts of Plutarch and Sallust, were implicated in the conspiracy of Catiline, except that it might be urged in rebuttal that the reason why the Romans pardoned them was that they afterwards made amends for the crime which they had committed. Besides, they were provincials. To the undisputed example of the

Cic. Verr. 3

Tarquins we add the famous speech which was made by the Roman citizens at Lampsacus to the people of that city when a similar problem arose. The latter, aroused by Verres' attempt to assault a girl, were endeavoring to kill him, when the Romans, begging them to desist, admonished them that the title of embassy should be considered by them of more importance than the wrong committed by the ambassador, adding that they themselves perceived that the man was licentious and depraved. But, they continued (this is my own opinion, nor do I trouble myself greatly about the character of the ambassador), since he had not accomplished what he had attempted, and was to leave Lampsacus forever (I emphasize this), their error would be less serious if they spared a wicked man than if they refused to spare an ambassador. Observe the absolutely sound principle involved in the

Doctors on
D. 43. 16. 1. 27
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second point. We commit a grave offense against international law, if in our efforts to repel violence we go beyond the proper limit. To put to death such an ambassador would be to show cruelty far transcending the requirements of the case. As the sovereign can order him to depart, he ought not to be put to death. Nor can anyone say to me that this ruling of the jurists holds for private individuals but not for kings. The principle of international law holds equally for all, and the principle which controls the relation of private individual to private individual is unquestionably the same as that which controls the relation of public personage to public personage, and of ambassador to king, because an ambassador also is the personal representative of a sovereign. Such is my opinion. I think that there was justice in the protest of Francis I against the Duke of Milan's action in putting to death his ambassador on the bare pretext that he was plotting a revolution. There was justice also in England's recent treatment of the Spanish ambassador, who was dismissed for con-

spiring against the life of the sovereign and the safety of the kingdom. That dismissal is the proper treatment for an ambassador is the conclusion I have come to after a study of the soundest principles and precedents. To prevent it being thought that I have failed to touch on every kind of consideration, I add Plato's opinion, as Diogenes has stated it in his biography. Plato said that regard for one's reputation should prevent one doing violence to ambassadors on suspicion. And in fact who will refrain from saying that the violence done to an ambassador is due to mere suspicion? Let us recall what (according to Volcatius) Verus wrote to Marcus: "In cases of treason," he used to say, "it regularly happens that even those against whom the charge is proved are thought of as victims of violence. For you know what your grandfather Hadrian said: 'Luckless the lot of emperors, for it is only their death that will convince the world that their power has been assailed.'"

Hannibal sent a man to Carthage to try to break up the peace with Rome. When suspicion of the envoy's design arose and he was liable to arrest, it was urged that it was a bad precedent for guests to be apprehended for nothing, and he was not arrested. Now if so much is conceded to a private individual and to the right of hospitality, why should not still greater concessions be made to a public personage and guest in a similar situation? In regard to foreigners, hear again what Plato says in the fifth book of his *Laws*: "All offenses against foreigners are more liable to divine vengeance than those against fellow-citizens, for since a foreigner is separated from his friends and relatives, he deserves, both among gods and men, greater commiseration." But as my view that an ambassador ought not to be put to death seems to me to have been satisfactorily established, I will state now the argument in support of the other side of the question. International law, by which alone I think an ambassador ought to be judged, should certainly operate impartially for and against ambassadors. Now even the slightest injuries (as I have narrated) inflicted upon ambassadors have resulted in the destruction of famous cities. Much more therefore, it is urged, is an ambassador liable to death for so signal an offense. I am not shaken in the opinion I have adopted. The argument does not influence me. I hold that an ambassador (this is established by an irrefutable argument) should be put to death or be surrendered, if he has inflicted even the slightest injury upon the sovereign. But I mean an injury resulting from some act. For I do not think that the mere

In Dio Cassius

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Livy 34

125 consideration of plans against an ambassador has ever resulted in the destruction of cities or in any similar crime. Such is my decision. I rule, moreover, that this ambassador can be dismissed, and my reason is that since an ambassador can without further ado be recalled by his own sovereign, he can be dismissed in the same way by the other sovereign; and all the more when the latter feels that he has been signally insulted. Otherwise, on wholly unjust grounds, we shall be establishing an extreme inequality of law. Such was my discourse on that occasion. At the end I added that there was a third opinion on the question, that the sovereign of the ambassador should be consulted in regard to the offense. I should now like to avail myself of the opportunity of making some remarks on this point.

CHAPTER XIX

If an Ambassador Has Committed an Offense, His Sovereign Should Not Be Consulted

I do not know what the arguments of those who advocate such a consultation are. I should think, however, that they might advance one or two of this kind: Dismissal is a serious stigma with which an ambassador and his sovereign ought not to be branded. Again, a written communication to the sovereign of the ambassador will result in a more just punishment being inflicted upon him. For we must suppose that the ambassador will be surrendered by his master to the authority of the offended sovereign, since it has been found to be a rule of international law that one who has done violence to an ambassador should be surrendered, and that, on the other hand, the ambassador who has violated international law should be treated in the same way. So the Gauls demanded from the Romans the surrender of Fabius who violated international law, for, though sent to them as an ambassador, he fought against them. "The barbarians," Livy says, "seemed to demand what was their right." The Bk. 5
facial priests, though the Senate did not recognize the right, thought he ought to be surrendered, as Plutarch says in his life of Numa, and as we have noted above, together with many other examples 126
of the same kind. These arguments, which I have been able to foresee, I dispute. The first consideration advanced has no force, since an ambassador guilty of so great a crime is not entitled to such merciful treatment from us that we should take it upon ourselves to be solicitous about his reputation. He himself, we have grounds for thinking, was not at all concerned about it. His sovereign also, who in sending such a man has been guilty of a serious fault, has no reason to be indignant if he finds that his action has resulted in embarrassment to himself. But let us consider the disadvantages involved in the second argument. May I ask why the sovereign of the ambassador is to be informed? In order that he himself may act as judge between the ambassador and the offended sovereign? But the latter ought not to be subjected to the judgment of the other. Moreover, it would be a dangerous thing for him to be judged by one whose personal representative is the other party to the suit. Again, there might be occa-

sion—and that too justly—for trouble on a still larger scale, if the sovereign consulted should write back that no measures should be taken against his ambassador. In that case what is to be done? Will any measures be taken? If so, the sovereign will be more seriously injured than if his ambassador had been dismissed without his being consulted. Or shall we reply that he is injured as the result of his own injustice in objecting to the punishment of a guilty man? But if the sovereign intended to treat the ambassador with cruelty, no matter what the reply of the one consulted was, why should he consult him? For the sake of judicial form? His purpose, I fear, is to insult him even more flagrantly: it is not enough for him to punish him without consulting the inclinations of his sovereign; he wants to do it against the sovereign's will and in spite of his objection. Moreover, the sovereign is sure to object; there is a reason for that: he will quickly conclude that to hand over his man—nay, more, his own representative—unheard by himself, to an angry and adverse sovereign, is not in accordance with his dignity or his duty. Experience itself in the case of Fabius confirms this supposition. Fabius was not surrendered to the Gauls, and whether this is to be referred to his wealth or his influence, it is incontestable evidence that an ambassador is not surrendered. Can we not regard it as certain that Catiline was saved from a similar surrender? What else can this remark by Cicero mean: “Is it not, Catiline, a monstrous and a portentous thing for you to hope for or think of the consulship? From whom do you seek it? From the Senators, who by their authority stripped you of all your decorations and almost surrendered you in chains to the African envoys?” Catiline was not surrendered, although it is extremely probable that he had wronged those ambassadors and deserved to be surrendered. Saturninus, as we have related, was not surrendered. Now if this was the situation at Rome, it is easy to conjecture with certainty what is bound to happen elsewhere, where not even a thousandth part of the virtue of Rome but far more intrigue and corruption are found. This is the law, but the occasions and the extent of its observance are shown both by these Roman examples and by all the others which have been mentioned in the fourteenth chapter. So he who is wise will form his judgment not from what ought to be done but from what is done. But why expect surrender in the situation we are investigating, since our conclusion is that any serious measures against the ambassador are out of

In toga candida
contra competitores,
fragm. orat. A. ix.
15 (Müller)

the question? I therefore am not in favor of this view, nor do I 128
approve of a certain fourth theory, that other princes should be con-
sulted and that the ambassador should be treated according to their
advice. For this also breaks down as a result of what has already
been said. In a word, since the principles we have laid down are
reinforced by examples sustaining our opinion, why do we resort to
other conclusions? The physicians of Alexander the Great refused Curt. 3
to allow certain kinds of drugs, however good they might seem, to be
administered to the King, on the ground that they had not been
thoroughly tested by experiments. Will you tell me what view except
that adopted by us has ever been put to the test of practice?

CHAPTER XX

If an Ambassador Should Insult a Sovereign; and Liberty of Speech

The serious problem discussed above is succeeded by another touching the ambassador who transacts or expounds the business of his embassy in insulting or supercilious language. For although insulting a sovereign does not constitute the crime *lèse majesté*, it is very close to it. This is not only self-evident, but the interpreters of the law so rule, and the juxtaposition of these two titles in the *Code* makes it clear. We ask then what is to be done to the ambassador who has insulted a sovereign? In regard to what should be done to others, there is the following ordinance of the three Emperors: "If anyone, knowing naught of self-restraint and a stranger to orderly conduct, thinks that our names are open to the assaults of mischievous and impudent abuse, and becoming unruly through intoxication shall disparage our era, we do not want him subjected to punishment or compelled to suffer any cruel or harsh treatment. For if his conduct proceeds from levity, it ought to be despised; if from insanity, it deserves to be commiserated; if it is the result of a wrong, it should be overlooked. The matter, therefore, should be reported to us in all its phases, in order that we may weigh the words in relation to the personality of the offender, and in this way consider whether they should be overlooked or punished." The Emperors are speaking of the abuse of a sovereign behind his back, but the principles hold also when a sovereign has been insulted to his face. The latter, to be sure, is a more serious offense, and Aristotle did not pay any more attention to abusive talk about him in his absence than if someone had beaten him in his absence; but it is always true that levity ought to be despised, insanity commiserated, and some allowance made and indulgence granted to a just resentment (such is my interpretation of those words) originating in a wrong suffered. These remarks, therefore, and the others which follow in this ordinance are, as I understand them, applicable also to abusive language addressed to the sovereign in person. Further material bearing on the subject is furnished by the speech of the Rhodian ambassadors to the Romans on behalf of another embassy of theirs which had given offense: "Men of quick temper hate arrogant language; the wise laugh at it, especially if

used by an inferior to a superior; but no one has ever thought that it deserved capital punishment. Some men assail even the gods with still more defiant words; yet we have never heard of anyone struck by lightning on that account." So they spoke, and in one of his responses Cravetta shows that their conclusion has been widely accepted by our jurists. For my own part I accept all these opinions as applicable not only to others but also to ambassadors. But on the other hand positive offenses against the law ought not to go unpunished; that is the essence of all laws and all reason. Have not arrogant and brutal responses given to ambassadors resulted in wars? Is then an ambassador who has acted in this way toward a sovereign to escape punishment? I do not deny ambassadors freedom of speech. For if I did, I should be approving of the examples of the Spartans, the Athenians, Teuta, Julian, and others who, as I have chronicled with disapproval, were guilty of atrocities toward ambassadors who expressed themselves freely. But I insist that an insulting tongue should be silenced. One who abuses a right is unworthy of the protection provided by that right. He himself is responsible for the situation, and this holds even where a sovereign has ordered an ambassador to act in such a manner. The sovereign does not deserve the protection of international law in the case of his ambassador, for he is using that law, which was devised to bring men together, for the promotion of dissension and discord; at any rate, for a purpose alien to the law. I think, therefore, that the ambassador of Justinian is in error when he says: "The ambassador delivers whatever instructions he has received from the sovereign sending him on the embassy; and if these are found to be lacking in probity and rectitude, there is no sound basis for an accusation against him, though perhaps he who has sent him should be blamed." But is this so? To consider another case, if the ambassador has taken some action of the kind solely on his own initiative, he ought not to enjoy immunity, both for the reason already mentioned and for this additional one that having exceeded the limits of his instructions he is unable to fall back on them. Nor in this case is any wrong done the sovereign who has sent him, for the sovereign should hold himself responsible for intrusting the business to a man of this type, whom of course he knows or (what amounts to the same thing) ought to know. If he makes a mistake, it is in the highest degree reasonable that the evil should recoil on himself rather than fall on anyone else. Thus can our opinion be corroborated. But how do

Dion. Hal. 4
Livy 4

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Procopius,
Bell. Goth. 1

- 131 we distinguish between liberty of speech and insult? I do not class as insults things which ambassadors must do and say. Such are the plain demands of the person sending the embassy, or the reasons why he is doing or has done something. Yet I do not admit all demands or all reasons. I object to demands, the very statement of which clearly shows them to be, under international law, unjust and wrong. I mean demands, the mere utterance of which reveals their unjust character, and which in general need nothing outside themselves to indicate what they are. I approve of reasons that are essential, appropriate, and pertinent to the demand; others I do not tolerate. Antony had the ambassador of Caesar flogged because he had addressed him impudently. Let us imagine that the ambassador demanded that Antony should surrender on the ground that, being effeminate and degenerate, he was unworthy to continue to participate in the government. I maintain that that ambassador was flogged justly. For what sort of reason was his? Let us suppose that it was not put as a reason at all, but in the form of a simple denunciation: "I say" (he may have remarked), "that you, Antony, are a fool, a criminal, and a by-word of infamy." Should such an ambassador as he be spared? And what sort of demand was this? Let us look now at some examples of the opposite kind. That most upright Emperor, Alexander Severus, who had a permanent retinue of very distinguished jurists, deprived some Parthian ambassadors of all their equipment, and banished them to Phrygia because they had made certain disagreeable demands of him. I do not approve of this. I am more inclined to praise the treatment of the Parthians at Rome in Nero's reign, which Tacitus describes in his fifteenth book. He says that while the barbarians' lack of intelligence was ridiculed because
- 132 they demanded Armenia, which they had already seized and were holding, and on this account they were dismissed without having attained their purpose, yet they were given presents. For what would the institution of embassy be unless everyone were permitted to ask for all the things which he is convinced he ought to ask for? When the ambassador of Xerxes demanded earth and water for his King, the Lacedaemonians and Athenians threw him into a well and piled earth upon him. Then they sent him away, telling him that they had given him earth and water according to his demand. It was an infamous deed. The Scythian King was more just who, as Herodotus writes in his fourth book, was guilty of no atrocities in dealing with the ambassador

Plutarch

Herodian 6

Polybius 9
Herodotus 7

of Darius, who made the same request. The Romans acted with proper punctiliousness in sending away unharmed the ambassador of the Latins who, as Livy says, spoke like one who had captured the Capitol, not like one enjoying the protection of international law. Plutarch speaks of the graceless malevolence of Antiochus, and censures him for not granting free speech to Xenocrates, the leader of the Athenian embassy. What is to be free, if speech (especially in the case of an ambassador) is not free? The action of Manuel, Emperor of Constantinople, who put out the eyes of Dandolo, the ambassador of the Venetians, because he expressed himself somewhat too freely, is recorded as a violation of international law. The Venetians themselves were very scrupulous in such matters, for, as Guicciardini relates in his seventh book, they sent away in safety the fecial legate of the King of France, who on declaring war against their Republic, charged them with injustice and other offenses. But enough of precedents and principles here, though in our next book, where we shall discuss the bravery of ambassadors, a goodly number of instances bearing on the theme will be forthcoming.

Bk. 8

Plutarch,
Phocion

Volterrano,
Commentarii urbani
21 (Anthropologia)
Fulgosius 9. 6

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CHAPTER XXI

Other Offenses and Penalties of Ambassadors

What if an ambassador is guilty of an offense against others? We have said that if he has committed any offense against a sovereign, the infliction of punishment will depend upon the will of the sovereign, for (according to the opinion we have expressed) he must be surrendered. And since he is in the power of the sovereign who has been injured, it is right that he should receive the treatment usually meted out to one whose position is that of a captive. What action should be taken against such a person is shown clearly both by my former discussions and by the very term "captive," which I have just shown to be applicable to him. If an ambassador commits an offense against someone other than a sovereign, I do not think that the determination of the penalty rests with any individual. There is not the same reason for treating as a captive an ambassador who has been guilty of an offense against a private person, as there is for our ruling that everyone who commits an offense against an ambassador should be so punished. The reason for this is that there is a wide difference between officials and other persons. But why is there not equality of right, so that an ambassador who is guilty of an offense against a private citizen should suffer the same penalties as a private citizen who commits an offense against an ambassador? It must be admitted that there is a lack of equality (though it does not amount to injustice), if we assume the validity of the right of retaliation in kind. For my own part, I should assume it. Since Plato says that justice is of God, I can readily believe that vengeance on the principle of like for like is a phase of natural law, for it is recognized by the Mosaic law and by the law of the Twelve Tables, and we know that these codes imitated the simplicity of nature. Furthermore, the Pythagorean philosophers have defined justice as nothing more than like for like, and have traced this sentiment, phrased in the following words, all the way back to Rhadamanthus: "If one in turn should suffer what one has inflicted, the judgment and the vengeance would clearly be just." Even though this dogma has been refuted by Aristotle on the ground that like for like is not possible in every case, I admit the right wherever there is an opportunity for it. Moreover, Cicero, Justinian, and others insist, and natural reason teaches us, that

absolute justice is done, if the punishment inflicted takes the exact form of the crime. The principle has been impressed upon everyone by nature that he should not do to another what he would not have another do to him, and a corollary of this, so far as punishment is concerned, obviously is that all should suffer and be willing to suffer what they themselves have done and wished to be done to others. Assuredly our laws assert that there is in a right of this kind equity of the highest type and justice so manifest that it arouses resentment in no one. Therefore, in the case of ambassadors, who we know should be judged by natural law only, the soundest conclusion seems to me to be that they should be visited with retaliation in kind in all the cases in which such retaliation is appropriate, and it is appropriate in all offenses which have been committed voluntarily, provided they have been consummated. Following the lead of the philosophers, I call voluntary offenses those which have not been committed under compulsion or unwittingly, as the philosophers themselves demonstrate with copious illustrations. I exclude also offenses committed in the heat of anger—a principle which has been admirably explained by Plato in the ninth book of his *Laws*, and has been made the subject of some critical comment by Alciati in the seventeenth chapter of the first book of his *Dispunctiones*. Further, I should call those offenses consummated which have been carried through as far as they can be and are wont to be carried by men, or which we can or are accustomed to regard as constituting the final purpose of the wrong-doing. For example, a crime will be consummated if poison has been administered, even if death has not ensued, since as much has been done as can and is accustomed to be done by one in consummating this crime. Again, I call a crime consummated if wounds have been inflicted, for many have been accustomed to make the infliction of wounds the end of their criminal activity. I also class this as a consummated crime, even if he who inflicts the wounds has not intended the wounds to be the end of his wrong-doing. Conspiracies and activities of a similar character will not be called consummated crimes on either method of reasoning, because they are neither complete nor does anyone make them an end of action. Furthermore, I do not think it a consummated crime, if one has merely taken up arms, and has not attacked or frightened anyone. The reason is the same. But if he shall attack someone—the sole purpose of a great many—so that his act is an offense on natural as well as civil principles, we shall say that

D. 2. 2. 1

Aristotle,
Magna moralia 1; Rhetorica 1
Xenophon,
Cyropaedia 3
Piccolomini,
Phil. mor. grad. 2. 2.

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it is a consummated crime, and that for an offense of this kind against a sovereign an ambassador is liable to the penalty of surrender. This offense, therefore, which is added here as a specially virulent example, is, we affirm, subject to the penalty of death, because what is permitted to a private citizen on the spot, is allowed to a magistrate and a sovereign after an interval. It is permissible for a private person to kill immediately one who raises a weapon against him; and indeed in any way at all, if his honor demands it. Similar permission of punishing an ambassador will also be allowed to a sovereign, and I agree with Heliodorus, who, in the case of some ambassadors (they belonged to a sacred embassy too) guilty of abducting a girl, favors the infliction of the death penalty if they should be caught; for if it was permissible to kill them in the act, it is permissible later. Now I return to the main line of my argument. I set up the punishment of like for like in crimes which have been committed voluntarily and which have been consummated. Moreover, I set it up in the case of all persons, contrary to the opinion of Aristotle, who says that the right of retaliation can not be resorted to in dealing with a magistrate, since a magistrate who inflicts an injury should not be injured in return. But in this matter I should oppose the philosopher. For if the magistrate inflicts the injury legally, he does not commit a crime thereby, and there should be no discussion either of retaliation or of any other punishment. But if the magistrate is not performing a legal act, how does Aristotle prove that the magistrate ought not to be injured in return? Our laws would insist that he be punished, and with special severity, since he, who was appointed to be an avenger of wrongs, has himself turned out to be a wrong-doer. This is my opinion on the question of persons. Again, I do not indorse Aristotle's opinion that everyone who has done wrong involuntarily is immune from retaliation in kind. For where an act has resulted in loss of money or of something which can be evaluated in terms of money, I should admit such retaliation. My reason is that where the only question involved is that of compensation for a loss, the case of the one who errs voluntarily and that of him who errs involuntarily are identical, since the action is the same in each case. "Ought I," the loser will say, "to suffer loss by reason of his imprudence, or should he himself bear it?" Plato certainly supports this view, for he expresses the opinion that losses inflicted involuntarily are not less important either in number or in magnitude than others, and he ex-

Aristotle, *Rhetorica* ad
Alexandrum
Plato, *Leges* 9

pressly rules that they should be made good along the lines which I have indicated. It is an established principle, recognized by the very laws that are in use, that he who offends involuntarily is liable to a penalty commensurate with the crime. In my own argument in regard to the punishment that should be inflicted, I define the involuntary agent as one who, if he had been master of himself, would not have done what he did do. A madman is not master of himself; an infant is not master of itself; a man under compulsion is not master of himself. In such cases retaliation should not be resorted to. One who is guilty of a fault, but not of a fraud, I call an involuntary offender, and for the present I set him down as liable to retaliation. What of the instances in which the status of the offender or the nature of the case precludes retaliation? The offender's status precludes it when he has involuntarily committed a crime that is not at all of a pecuniary character. The nature of the case precludes it when the deed is not one which can be punished by its like. How will the inspiration of fear, how will an insult be punished? I know what Gallienus devised, but nothing of the kind is possible in the case of him who knows that the machinations against him are confined to an attempt to frighten him. I should refer this whole matter to the discretion of a judge, for it is of such a nature that it depends on equity alone. No permanent or general ruling (as Scaevola once said) is possible in regard to it. This opinion tends in the right direction, for the more we refer to a magistrate, the nearer we approach international law, since it is established by more than one reason and by more than one piece of evidence that in that law the magistrates (and by magistrates I mean sovereigns) adjudicate on rights and pronounce judgment; and the question with which we are dealing is one of international law. If anyone should ask me about poisoning, I should give my opinion that retaliation in kind certainly has a place therein, no less than in the case of the hand, foot, eye, tooth, wound, burn, bruise, fracture, and the like, about which Moses has expressed his will specifically. As to the fact that he to whom poison is administered in retaliation may die, and so the punishment exceed the crime, I would point out that this is true in all the Mosaic cases also. Moreover, Sextus Caecilius actually uses this argument in defense of retaliation, as we know from the first chapter of the last book of Gellius. If this principle of law is not satisfactory, we must in this whole matter cling to that which we set forth touching the authority to

D. 9. 2. 5;
1. 3. 12

Trebellius,
Gallienus

D. 44. 3. 14

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Exod. 21
Lev. 24

decide vested in the magistrate, and which the Romans may be observed to have adhered to in the indictment of Bomilcar, a member of Jugurtha's suite, who under the established law of nations was inviolable. For this is my interpretation of Sallust's words: "Bomilcar was put on trial in accordance with principles of justice rather than in conformity with international law, as he was a member of the suite of one who had come to Rome under a national guaranty." The plan was that he should not be tried by the expeditious code of international law, by which the matter would have been dispatched immediately with clean-cut and prompt severity, but that by means of a longer and less rigorous investigation, through numerous processes and through bondsmen, the whole affair might be made to assume a milder form. It remains for me to complete this whole discussion by describing a certain situation, and with that I shall end the chapter. The case is that of a hostage spirited away by the aid and counsel of an ambassador. What should be done to the ambassador for an offense of this kind? When it happened at Rome, the ambassador was ordered (the story is from Polybius in the *Selections*) to leave the city within five days. Livy in his twenty-fifth book tells of another ambassador who also spirited away hostages. But he does not explain what happened to him, though he is explicit in regard to the hostages. 139 These, he says, were brought back, flogged in the Comitium and Livy 5 thrown from the Rock. What basis of right are we to think this action had? According to Dionysius the person of a hostage is sacrosanct in the same way as that of an ambassador, but we find many cases of hostages being killed. The consul Appius actually beheaded three hundred Volscian hostages, because that nation had not been true to its treaty obligations; and if hostages are thought to deserve that punishment, why should not the ambassador who furnishes counsel and aid D. 48. 19. 16 for the crime be thought to deserve it? The jurist Saturninus has said that to aid others with advice is as bad as committing the crime, and from several sources the opinion has come down that the punishment of the adviser should be the same as that of the delinquent. My own view is that by this act the ambassador is guilty of a capital offense, and is subject to surrender, for it can not be denied that it is a serious crime against the state. The Roman precedent would be in accordance rather with the character of that people than with the principle of the law. Thus we know that others would have spared the hostages on both occasions on which we have narrated that they were put to death by the Romans.

Livy 2
Dion. Hal. 6

Livy 2
Guicciardini 2

CHAPTER XXII

The Right of Ambassadors with Their Own People

We have finished our treatment of the legal status of ambassadors with foreigners. Now we must speak of their status with their fellow-citizens, to which we shall show two elements contribute. Of these the first is based on the laws of Justinian, while the other is founded on national customs. It is in regard to ambassadors of inferior rank that Justinian states what I shall set down here, but most of it is applicable to ambassadors of superior rank also, as anyone who will pay attention can easily see. First of all, then, it has been handed down by Hermogenianus, and admirably expounded by Charisius in the title of the *Digest* on public duties, that service as ambassador is a duty which every citizen owes the state. It was this which led Marcianus to write in the twelfth book of his *Institutes* that everyone in turn is under obligation to perform the duty of embassy, unless there should be just grounds for excuse (of which there are several, but I shall not list them here); or unless one is prevented from undertaking an embassy, which is the case with some, who are noted in the fourth law of the title of the *Digest* on embassies. I cite the sixteenth law of this title as authority for the statement that the same person is not prevented from undertaking several embassies, if saving in expenses and in travel should make it expedient; and the fourth law, that more than one (but not more than three) could be sent on an embassy. Further, the Emperors also in the last laws of the corresponding title in the *Code* have laid down the principle of sending these embassies. Moreover, it is worth while to relate that sometimes one who has been appointed to an embassy can delegate his function to another. "Ambassadors," says one jurist, "can not appoint any substitutes other than their own sons." But if one has been appointed to an embassy in his absence, and has undertaken it gratuitously, he can, as another authority has informed us, delegate it to someone else. So much for the persons who serve as ambassadors. How strictly they are confined to the business of the state is clearly manifest from the fact that during the period of their embassy they can not be active in the business of others or in their own. Yet there are some things which they are not forbidden to do.

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D. 50. 7. 1, 18(17),
5(4). 3, 7(6), 8(7),
9(8), 14(13);
50. 5. 12; 26. 5. 21;
27. 1. 6; C. 10. 65.
1, 3, 4

D. 50. 7. 5(4)

D. 50. 7. 12(11)

D. 50. 7. 9(8)

D. 50. 7. 2, 11(10),
12(11)

- These are pointed out in the title *Digest*, 50. 7, and in the law *Digest*, 141 5. 1. 2. The motive of this ruling, however, is to prevent the ambassador from being diverted from the duty of the embassy which he has undertaken. Not even others therefore, as has been said, can engage him in any transaction. But on the other hand, if no diversion from the business of the state is involved, the ambassador is not forbidden to participate in private business of his own or in that of others.
- D. 5. 1. 24 Furthermore, a slight diversion is not a hindrance. From this it follows that in the case of a suit started against an ambassador in his native country before he undertook the embassy, he ought to be defended in his absence, though in a suit started during the term of the embassy the converse is true. The reason for this is that in the former case he can before his departure charge his kinsmen and friends with the defense of his cause at home; and they faithfully and without summoning him from his embassy can effectively defend him. But this is not possible in the other case, even if the ambassador should attend. However, should he suffer anything in his native land which would call for an appeal on his part for the restoration of rights forfeited, it has been ruled that this is open to him. Moreover, the ambassador (this seems to follow) gets the benefit of time from the date of his appointment as ambassador, not merely from the date on which he arrives at the place where he is to perform the duties of his embassy. Nor is his time finished on the date on which he starts back, but a certain period is allowed for the journey, as Neratius has admirably explained in the first book of his *Membranae*. Again, I hold that under the law the ambassador can on his return claim the expenses incurred in the transaction of public business, even though the embassy was gratuitous. For if he has undertaken a gratuitous embassy, he will be deprived of remuneration only; otherwise this also will be given. Further, he can claim reimbursement for losses which he has sustained on account of the embassy, as has been handed down by the interpreters of the law. But in the case of him who undertakes an embassy for a fee, I think that we must give the opposite reply. Finally, in the case of the ambassador, the additional indulgence is conceded that, "if he dies during his embassy and before he has returned to his native country, the money given him for expenses on his departure need not be returned." On the other hand, if he deserts his embassy or otherwise fails in the performance of his duty, provision has been made for his punishment. Why should I
- D. 4. 6. 5, 8, 26;
29. 2. 30, 86
- D. 4. 6. 1
- D. 50. 7. 6(5)
- D. 50. 5. 4
- D. 3. 4. 7
- 142
- D. 17. 1. 26. 6
- D. 50. 7. 11(10)
- D. 50. 7. 1, 2
C. 10. 65. 2

desire to add to these citations further testimony from the commentaries of the interpreters? I am afraid that even this material, though it is drawn from the sources of civil law, is a blot on that more luminous exposition which we have given of international law.

CHAPTER XXIII

The Right of the State toward Its Ambassadors, As Established by Custom

Let us then examine the other element in the status of ambassadors. I mean that which is based on customs rather than on law, and which directly affects the ambassadors of superior rank. Demosthenes in the oration against Aeschines informs us that ambassadors should be made to give a report of their statements, their advice, and their orders, and in general to show whether their actions throughout have been free from corruption. Nor can the principle that "punishment is not exacted for words" be accepted here, for the only things consigned to ambassadors are words and opportunities. Plato's view on the subject I prefer to give in its Latin version. "If," he says, "an ambassador or herald has made a false statement of the things intrusted to him by his government; or in any other way has been guilty of dishonesty in his embassy, passing over in silence things of which it was his duty to speak, or saying something which had no basis in fact but was invented by himself; or if he has been detected in otherwise perverting his mission, whether the negotiations have been with enemies or with friends; proceedings should be taken against him just as against one who has impiously and wickedly transgressed the embassies and mandates of Mercury and Jupiter; and if he shall be found guilty by some tribunal, that tribunal shall have the authority to decide what punishment he must suffer to atone for his crime." Such is the opinion of Plato. The Athenians treated a false embassy, that is, one which was never commissioned and was undertaken on false pretenses [in other words, a spurious embassy], as a capital offense. Moreover, according to the explanation of Suidas, that embassy is also called false, in the course of which something has been done or said contrary to instructions, or contrary to the interests of the state. Further, there was a law at Athens that ambassadors should not accept gifts, and many were condemned to death for so doing. Again, the ambassador who made a peace with the Persian King that was highly honorable and warmly approved by all the Athenians was very nearly put to death because it was thought that he had accepted gifts during his embassy, and in the accounting they

Leges 12

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Demosthenes

Xenophon,
Hellenica 7

exacted fifty talents from him. At Rome also custom prevented ambassadors from accepting gifts or money. We know that Fabricius was admonished and ordered by the censors to state explicitly whether during his embassy to Pyrrhus he had received any gift or been a party to any corruption. In our own time the Duke of Muscovy (Giovio in his *Icon Basilii* is our authority here) is in the habit of taking away all their gifts from ambassadors on their return to him. The Venetians prohibit their ambassadors under very heavy penalties from accepting any honor from the person to whom they are accredited. For my part, I approve of these customs more than of the contention of the interpreters of the civil law in favor of an ambassador's keeping his gifts. But I shall speak more fully on this subject when I discuss the self-restraint of ambassadors. The Athenian whom I mentioned just now ought not to have escaped punishment because he had distinguished himself in making peace, if at the same time he accepted gifts contrary to the law. I approve of the plan of the Spartans, who for one and the same deed punished and rewarded the same man. He was a youth who was crowned by the ephors for fighting valiantly against the Thebans; but at the same time, because he fought without arms (as Plutarch writes) or with other than the regulation arms (as Aelian reports), and before he was of military age—all these things were contrary to law—they fined him a thousand drachmae. This is a striking example, if one only knew also on what occasion the fight took place. Sulla manumitted a slave as a reward for the information he had given, and had him flung from the Rock as a punishment for his crime in betraying his master. I praise these acts, which we know were approved even by the Emperors Severus and Antoninus. Such measures, moreover, conform to that system by which the good and the evil in deeds, being judged separately instead of in combination with one another, receive a distinct and therefore juster evaluation. Nor should we pass over that question which Cicero has noted in the second book of his *De inventione*, whether an ambassador who has not been provided with traveling expenses, and on that account has not gone on his embassy at the appointed time, ought to be punished. Whatever arguments Cicero may advance, I do not think that the ambassador deserves punishment, since no negligence can be attributed to him, provided the failure to furnish the expenses is not due to any effort or pressure on his part. The principles in such a case are thoroughly established. So much for punishment. An em-

Dion. Hal.
in Selections

Giovio,
Icon Basilii
Erm. Barbaro

Alciati,
Praet. 18. 1

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Vita Agesilai
Varia historia 6

Livy 77 (periocha) 7
Plutarch

D. 34. 9 1

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bassy well executed was, we know, rewarded at Athens in more than one way. A crown of sacred olive, a banquet in the Council-hall, a eulogy, and doubtless similar honors were given to those who performed the duties of an embassy with integrity. At Rome such service was a stepping-stone to the highest offices. To one whose embassy cost him his life and who perished by the sword, they erected statues and columns; to those who died a natural death they decreed a state burial. Cicero, however, was instrumental in having a statue erected to Servius, although he had not perished by the sword. These examples are enough, for I have no intention of resuming my historical account, which, according to the plan of my work, was finished in the previous book. At this point we end our discussion of the law of embassies. The subject will be treated—perhaps more fully—by others, to whom such a collection of customs will be more congenial.

Livy 3

D. 1. 2. 2. 43

Phil. 9

Plin. Hist. nat. 34. 6

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Illustrious Jurisconsult

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CHAPTER I

The Qualifications an Ambassador Should Have in Order to Perform the Duties of His Office

From the subjects which we have treated in the two previous books we now proceed to a discussion of the duty of the ambassador. That the great importance of this was recognized is shown clearly, apart from other considerations, by the fact that Cyrus thought that the man who was to undertake such an office should be educated among the nobility, and receive instruction from himself. As to the nature of the ambassador's function, this must be investigated first of all from the point of view of the standards required by the customs and rights pertaining to embassies. For the initial part of his duty is to observe those rights and those customs, and to see that others observe them in their dealings with him. Moreover, it is the ambassador's knowledge of what he ought to be and how he should behave that will constitute his best training in the rest of his duties, for one kind of embassy will necessitate one rôle, a different kind another. Let us, then, speak of these duties. But let us speak in such a way that we shall not seem to be trying to train an orator (although in Latin the word *orator* is sometimes applied to an ambassador), or a moral philosopher, economist, statesman, or soldier (even 147 if he ought to have some training along these lines), or a courier, in whose accomplishments the ambassador can not be deficient. For I am writing about the ambassador, and like Cicero, who requires an exact knowledge of all things in his orator but does not discuss them, I shall set forth only the essential qualifications of the ambassador, with such explanation as I am capable of. This is the plan that appeals to me, whether it is because I am not sufficiently learned to cover the whole field, or because I have attained a sound theory of composition. I can not approve of others who adopt a different method, nor even of Aristotle himself, who, by way of introduction to his treatment of an analogous calling, gives at great length many details which apply to another kind of artist and preceptor. I do not find any Peripatetics who adequately support Aristotle's position in their decisions, or who are not compelled to admit with shame that the titles should be removed from books, if the latter contain other

Xenophon,
Cyropaedia 8

Rhetorica 1

material than that which the former seem to connote. Therefore Quintilian, Cicero, Aristotle, Xenophon, the Italian Castiglione, Casa, Guazzo, and their like, who teach those disciplines, should be consulted in regard to them. I do enough in stating that the ambassador should not be wholly without knowledge of them, and in establishing the truth of this statement by more than one reason. I desire, moreover, that certain external advantages, as well as blessings of fortune and nature, should be found in the ambassador. Without these he can not suitably perform the duty which has been imposed upon him, or rightly administer his office. The nature and number of all these qualifications will be revealed in the discussions which follow. I shall certainly dispense with everything which is superfluous (to adopt the word which Polybius uses in speaking of the wholly different rôle of the soldier), and redundant to the point of uselessness. Nor do I think that we ought to pay any attention to Nicephorus, who requires in the ambassador a knowledge (and that too a knowledge of wide range) of all things and all languages. This is a confusing and absurd exaltation of human powers, since even if a man's life were prolonged three times the natural span, he could not, by reason of their great obscurity, attain to a complete knowledge of things. Common sense leads us to this conclusion; and learned men attest it. The latter also say that it was formerly considered wonderful if a man were acquainted with two languages. But how this matter stands we shall see presently. Now, to speak the truth about encyclopedic information, I wish to ask: What will an ambassador do with the whole science of medicine? What with astrology, astronomy, physics? In the first book of his *De inventione* Cicero remarks that questions such as those relating to the reliability of our senses, the shape of the universe, and the size of the sun are far removed from the field of the orator. What if I should give a detailed discussion of innumerable problems still more remote? What would our ambassador do with subjects of this kind? The function of the ambassador is a phase of politics, as Plato points out in his *Hippias Maior*, and states more than once in his *Politicus*. Tasso also lays down this principle clearly, and everyone can regard it as settled. What then will be the use of these disciplines on an embassy? Explain this to us, Plato, you who discuss the heavenly bodies!

149 Moreover, as we have said, their acquisition is impossible, for Cicero's remark is not only striking but true: "It is sheer madness to assign

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Bks. 9, 16

Galen, De simplicium medicamentorum temperamentis ac facultatibus 6; De pulsibus 2, 3

Epinomis; Leges 7

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Cic. Inv. 1

to the orator, as if they were trifles, subjects upon which the intellects of the greatest philosophers have, as we see, exhausted themselves with infinite labor." On the other hand, we are told that a moderate degree of learning was a characteristic of many great men of the republican era, and we know that they were superior to any encyclopedic scholar of this type. But we have elsewhere combated more fully the views of those who are always prating about the circle of the sciences; and it is remarkable how emphatically and how often Xenophon speaks against them, especially in the field of politics. Let us then, dropping these questions for the present, proceed to our subject.

Cic. Leg. 3

Cyropaedia 2, 8;
Memorabilia 4;
Oeconomicus

CHAPTER II

Our Requirements in Regard to the External Circumstances of the Ambassador

What then are the external circumstances which we deem requisite in the case of the ambassador, to enable him to perform his task properly? They seem to be two in number: an opportune time for the embassy, and appropriate equipment. For that was a clever remark which Tiberius made to the ambassadors from Ilium. It was an embassy of courtesy which came to tender condolences to the Emperor on the death of his sons; and when it arrived rather later than it should have, it was greeted humorously by Tiberius with the remark: "And I in turn condole with you on the misfortune which you have suffered in the loss of your most valiant fellow-citizen Hector." The story is in Suetonius. "There is a proper time for everything," says the Wise Man. The Stoics defined the time for
Eccles. 3
150 action as the opportunity, the missing of which, as Cicero points out,
Cic. Off. 1 results in a complete change in all one's duties. Thus, as Livy tells us,
Livy 35 the ambassadors sent from Rome to Antiochus to conduct negotiations in regard to state matters of the highest importance, halted with profound respect on hearing that the King was prostrated with grief on account of the death of his son, which had happened in the meantime. But this phase of the subject is well known. I estimate the scale—I mean the suitable equipment—of the embassy both from the number of the ambassadors and from the pomp which attends them. It is related of a certain Sultan that he considered himself insulted if ambassadors came to him without a large retinue or without gifts. In this matter, however, we must take into consideration both what the embassy involves and the person to whom it is sent. To speak first
Plutarch of the number of ambassadors, even that conqueror of cities Demetrius thought that he had been slighted by the Lacedaemonians when they sent him only one. On the other hand, there is also possibility of offense in sending too large a number, as is shown by Tigranes, who said of the little army of Lucullus: "There are too many of them if they come as ambassadors; too few, if they come as enemies." In spite of this we know that one ambassador was not infrequently sent, and was received without resentment. To illustrate the other point of view, certain peoples of India, as Curtius relates in his ninth book, sent a

Procopius,
Bellum Persicum 2

hundred ambassadors to Alexander, and Virgil somewhere introduces a hundred. Five hundred Persians are said to have come to Justinian. Whether all these were ambassadors, or whether members of the suite formed part of the number, does not affect the question at all. For it is almost always one man who acts and speaks and is designated the leader of the embassy, so that the rest may in a sense be called and considered members of his suite. King Khosroo sent so numerous a body that if they had entered a certain city they would have been in possession of it. Only twenty of them, therefore, were admitted, and when their leader complained, the answer given was that in coming with so large a retinue he was violating the custom of ambassadors. I remember having read elsewhere that three thousand knights were sent on an embassy. They were not, however, received within the walls of the city by the prince whom they had come to see, by reason of the fear which so large a number of armed men (for they had come with arms also) inspired in him. In the present discussion I can not lay down a definite number. But I am not greatly disturbed by this, because it is a matter which concerns the person sending the ambassador rather than the ambassador himself. I have done enough in pointing out (and I was bound to do so, since the number of ambassadors and their suite is of some importance) that an ambassador should be able to perform the duties of his office in an appropriate manner. For if the sovereign is properly impressed by his first view of the embassy, the ambassador will find it much easier to proceed with the negotiations. In regard to the other forms of display I shall merely remark (and this is along the same lines as my comments above) that in cases where the circumstances make it desirable, it intimately concerns the dignity of both sovereigns that ambassadors should come with all the pomp of a large retinue and elaborate equipment. For they represent one sovereign, and approach the other with the intention of negotiating with him on a basis of equality. Disrespect to both, therefore, is inevitable, if the ambassador should conduct himself in any other way than that which the dignity of so exalted a position demands. If we would hiss off the boards an actor who, when playing the rôle of king, comes on the stage with a shabby retinue and in anything but royal attire, what is to be done to the ambassador, who is not merely taking part in a play for a few hours, but is actually invested with the personality of his sovereign? At this point, however, I ought to praise a great many men who have shown remarkable efficiency in the way they have performed the other duties of their office, and who have acquitted

themselves with special distinction in this regard. I know who they are, but I shall confine myself to mentioning one ambassador intrusted with a definite piece of business, and one resident ambassador. They are the most notable of all. The former is the illustrious Henry Stanley, Earl of Derby, who in these last few months has carried from our Queen to the King of France the insignia of the highest order of knight-hood, and has displayed such splendor and pomp that France is said to be amazed at the magnificence of the embassy. The other is that distinguished knight, Amyas Paulet, who as the ambassador of our Queen at the court of the same King for four years, has attained such preeminence in the other functions of his office and in this, that men are never tired of saying that he has obscured the reputation of many who preceded him, and prejudiced that of many who will follow him. This is a matter of no small importance in the office of ambassador, and the Germans are accustomed to send on embassies only those who will be notable both for their personal qualities and the size of their retinue.

Tao. Germ.

CHAPTER III

The Ambassador Must Be a Man of Good Personal Appearance

If the ambassador should add natural gifts to the external circumstances I have mentioned, who could deny the importance of the addition? They say that Aristotle remarked that a handsome presence was a better recommendation than any letter, and when asked why beautiful things attracted attention answered that the question was that of a blind man. Isocrates certainly praises beauty above all else, and asserts that those things that are without beauty are despised. But I am not beginning a eulogy of beauty, nor shall I say what measure of good looks I demand in a man and in an ambassador. First of all, to pass over Aristotle's more minute classification of the subject, Cicero in his *De officiis* solves the problem by recognizing two kinds of beauty, that of man and that of woman. He bases the latter on charm, the former (with which we are concerned) on dignity. On this theory I should want an ambassador to be of comely appearance, especially one who goes on an embassy among barbarians. For the view of the Stoics has been universally refuted, and it has been established that man consists of soul and body. That barbarians venerate physical beauty only is clearly illustrated by the story that Alexander the Great was scorned by the Queen of the Amazons, because she failed utterly to find physical beauty in this great and (in the true sense of the term) handsome monarch, whom she had come to see by reason of the great fame of his achievements. Agesilaus the Great was despised and ridiculed by the Egyptians, as Plutarch has reported, because he was a man of somewhat small stature. Moschus did not act this way last year toward the illustrious knight, Hieronymus Boesus, who was sent to him as ambassador by the Queen of England. He is a man admirably adapted for all embassies of first importance, and (a point which bears upon our present discussion) has a tall and distinguished figure. He is endowed with a presence of that notable quality which gives an immediate impression of both vigor and courtesy—the kind of comeliness which Aristotle commends in a man. His bearing has such distinction that, great as is the number of handsome Englishmen, he earned the appointment as ambassador in preference to all others. Aristotle also writes that among barbarians honors are wont to be conferred in some regions according to this comeliness

Diogenes

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Isocrates,
Helenae
laudatio

Rhetorica 1

Cic. Fin. 4,
5; Leg. 1

Curt. 6

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Politica 4

Cic. Off. 1
Plutarch
Livy 50
(periocha)
Appian 12

Livy 43

which we are discussing, in others according to height. Lucretius in his fifth book says that personal appearance was of great influence in the primitive era of the world. Nor is it remarkable that this should be so among barbarians, for if anyone is likely to believe that man consists of body only (as others have maintained that he consists of soul only), surely it will be those who, as Cicero observes, are men in name only, not in fact. But why do I bring barbarians into the present discussion? The Stoic Cato is said to have girded at some Roman ambassadors, one of whom, having been hurt in the head by a stone, was disfigured by scars, while the other was lame: "The Roman people," said he, "is sending an embassy which has neither head nor feet." So much about appearance. In regard to other physical advantages, who would doubt that the same thing holds, or rather is still more true? In spite of this, however, it is not to be denied that sometimes considerations of a different kind prevail. We observe what great influence the crippled body of the Chalcidian ambassador had in the Roman Senate: "The embassy of the Chalcidians," they say, "on its very first appearance, because its leader Miccion, being lame, was carried in on a litter, was seen to involve matters of the utmost urgency, etc."

The Ambassador Should Be a Man Favored by Fortune

Now we must write about the blessings of Fortune. For my part, I insist on the desirability of these in ambassadors, although I know that either the folly or the obstinacy of certain sovereigns is so great that they send on an embassy anyone at all, hardly giving the matter a thought, and being under the impression that only they themselves who send the ambassadors need be respected. But I pass over the sovereigns. Let them act in this way; let them send the most obscure individuals, whether they purchase their services at a cheaper rate or whether they find them more to their liking in such negotiations. They themselves often realize by experience the results of this plan of intrusting their personality and their rôle to men of no standing. Augustus forbade seats to be given in the orchestra to ambassadors after noticing that some ambassadors of the freedman class were being sent to him. I have heard that Louis XI of France stooped to the shameful expedient of employing a barber as ambassador, and to this man of course only such consideration was shown as a worthless journeyman deserved. Nevertheless I wonder at the patience of other sovereigns, who brought themselves even to receive such a man and did not think themselves slighted by the French King. I am speaking of the ambassador himself. It is scarcely probable that a man of ignoble station could assume the personality of one of noble rank, much less that of a prince. For nobility itself is a stimulus by which we are urged to notable actions. It rarely happens that members of the proletariat bear themselves otherwise than abjectly and humbly. Therefore, I include the intrinsic power of distinguished position among the advantages which an ambassador bears with him to the place where he goes on an embassy. This he has either from his ancestors, or it has been developed in him by his previous career or by some other favor of fortune. Observe that because the Valerii, Menenii, and Horatii were popular with the common people, they were able in dealing with them to get results which others failed to obtain. "It was decided," says Livy, "that Menenius Agrippa should be sent to the people as ambassador, an eloquent man and dear to the people because he himself was of plebeian origin." And in his third book: "Then Valerius and Horatius were dispatched, and they were received with

Suet. Aug. 44

Aristotle,
Rhetorica 2

156

Bk. 2

- great joy on the part of the people, for as liberators, etc.” Why should I mention others? Phocion, sent by the Athenians as ambassador to Alexander and Antipater, obtained from those kings, because he was a great favorite with them, concessions which it would have been impossible for another to gain. The Athenians also sent some actor or other (this profession was not in bad repute among the Greeks) to Philip, who knew the man through his art and liked him. This ambassador accomplished his task. The Christian priests sent by Firmus had, by reason of Theodosius’ liking for them personally, a degree of influence with him such as others would not have been able even to hope for. This we can conjecture from the narrative of Ammianus. I should go on forever if I followed up this subject, but who could refrain from speaking of the noble embassy (it was an embassy, as we know from the evidence of Dionysius in his second book) of the Sabine women? In the midst of arms and slaughter they executed with conspicuous success an embassy which no other human beings would have been able to compass. Who would not recall to memory that other embassy of women to Coriolanus? Neither his most intimate friends nor the gods themselves—at any rate, the sacred objects and symbols of the gods—were able to move him; but his mother and this embassy of women obtained from him what was wanted. Great indeed, great is the power that rests in the personality of the ambassador. This has been happily expressed by Tasso in his second letter to Gonzaga; and the author of the *Rhetoric to Alexander* contributes the following remark: “The person we are speaking of can not execute the commission for you, but this other man, who is on friendly terms with the state of the Spartans, will very easily effect your purpose with them, etc.”
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- Hannibal, the Carthaginian, also pointed out this fact in a striking way, for he is said to have addressed Scipio as follows: “Your Senate, I hear, refused peace partly because the embassy lacked dignity. Now, I, Hannibal, ask peace, etc.” Pertinent to the same subject are Livy’s remarks about the Carthaginian ambassadors: “When their age and rank had been scrutinized (they were by far the most distinguished men of the state), everyone spontaneously exclaimed that peace actually was being negotiated, etc.” And what he says about Hasdrubal Haedus: “Because he had always been in favor of peace and an opponent of the faction of Barcas, he had for that reason more influence on that occasion.” But, as I have said, I shall not follow this up with a longer discussion. Let us now examine with more care the other matters which belong to the office of ambassador.

Plutarch,
Phocion

Aeschines

Amm. 29

Dion. Hal. 3

Livy 30

CHAPTER V

The Ambassador Should Be a Man of Superior Intellectual Power

One thing which is commonly desired in the case of all men I should especially require in the ambassador. I mean ability. And not to start a long discussion about the various gifts comprehended under the term ability, I ask: To what degree of efficiency in diplomacy can one, incapable of rapid thought, attain? This dexterity of intellect is, as Plato has said in his *Charmides*, a certain mobility of the mind. If on one occasion the Corinthian ambassadors had not had an answer ready to give Alexander, what chance would they have had of escaping the dire results of the King's impetuous wrath? They announced to him that he had been made a citizen of Corinth. When he made light of this, the ambassadors added: "It is an honor which we have conferred on you and Hercules alone." Alexander was so effectually placated by this remark that he even manifested inordinate delight in the citizenship. What appealed to him was that he had been recognized and treated as the equal of Hercules. Leo of Byzantium was sent to Athens that he might assist, so far as he could, in putting an end to the discord from which the Athenians were suffering. But because he was fat and had an abnormal waist-line, the citizens of Athens laughed at him as soon as they saw him. What did Leo do? He had so ready a wit that he seized this unfortunate incident as an opportunity of addressing them and winning them over to harmony, saying without a moment's hesitation: "Why, Athenians, do you laugh at me because I am so fat? My wife is far fatter than I am, and yet, because we agree, a very small bed holds us both, etc." When Demetrius (as we have reported) was angry because the Lacedaemonians had sent him one ambassador only, the ambassador, in replying to his complaints, merely said: "As only one is ruler here, O king, it seemed best to send one envoy only." Again, Hasdrubal Haedus, when seeking peace in the Roman Senate for the conquered Carthaginians, was asked by what gods they would swear to the conditions of a treaty which they had so often broken. His answer was: "By the same gods, whose hostility to those who break treaties has been proved." Read the thirtieth book of Livy. It is necessary for an ambassador to excel in this sort of thing, for in almost all cases his opportunity for action does not leave time for

Cic. Fin. 5

158

Sen. Benef. 1

Plutarch

159

Aristotle,

Analytica
posteriora;
Cic. Orat. 1

consultation, and can be effectually seized only by swift decision. It is this faculty of rapid decision which in a moment improvises plans to meet a situation, and determines the degree of elaboration and the order in which clever ideas shall be expressed, as Aristotle, Cicero, and others show us. But why do I endeavor to illustrate by examples and reasons a thing which is self-evident? Why don't I rather say in what way this power can be acquired? But you will say intellectual ability is a gift bestowed on individuals by nature. Nevertheless, I believe that it can be developed by art, and in a sense even acquired. The ambassador will never be at a loss to reply, speak, and act with decision and effectiveness, if he will use shrewdness and diligence in meditating beforehand what objections can be urged, what remarks made or action taken in regard to himself and his embassy. When has the man who is prepared been found wanting? His efforts will be aided in no small degree by an attentive observation of the words and actions of ambassadors and others in similar situations. For by like we are spurred on to like, and it is possible that you ought to give the very same reply which you have observed was given by others. Thus we not infrequently read that the same speeches were made and the same course of action adopted by many. To sum up, he who will bear in

160 mind the general types of circumstances and situations (and he who is to conduct negotiations will be sure to do this, as has been said) will neither fear those particular situations of possible embarrassment which can not be anticipated, nor lack skill in extricating himself from them. For every general conception of a type will carry with it a sound understanding of the different species of that type and of individual cases, so that when confronted by them we can not fail from fault of talent.

CHAPTER VI

The Ambassador Should Be a Good Speaker

Now let us scrutinize the other qualifications which we regard as requisite in the ambassador, and which do not come to a man spontaneously, but are acquired by him at the cost of great labor. We require the ambassador to have oratorical training, and the very word *orator*, which in Latin is applied to the ambassador as well as to the speaker, suggests the same requirement. Nor is there any reason why this assertion of ours should occasion any opposition. We give this intimation with all the more emphasis because we are now describing the type of ambassador who is not merely adapted for one kind of embassy, but is competent to execute efficiently the duties of all kinds. To be sure there is no need of oratorical power in the war ambassador or in several others. Do we require it in him whom we have spoken of as transacting a silent embassy? Or in him who expounds his embassy in set words? Or in him whose duty is confined to the delivery of a letter? The following fact must also be borne in mind in this connection, that we never want the ambassador to be given such thorough instruction in the art of the orator as to insist on his becoming familiar with all the details of rhetorical ornamentation. It is not right to divert one whom we destine for deeds of surpassing merit to a meticulous solicitude in regard to words and language. The style of speaking which we observe everywhere in the lucubrations of orators is not appropriate for princes, whose personality is assumed by ambassadors. What suits them is a style that is simple, without embellishment, figures, or ornamentation. Compactness is becoming in the discourse of the ambassador, and he should be famous for the weight of his opinions and the soundness of his reasoning, rather than for elaborate diction and discursive amplification. Demosthenes' experience with Phocion will fall to the lot of our ambassador, unless we follow the teachings which have been set forth above. Phocion would often give the gist of one of the famous orator's long speeches in a very few words, to the great annoyance of the latter. Do you want me to say what style of speaking I desire in the ambassador who is a spokesman? I want such a style as the author of the dialogue *De oratore*, whether it was Tacitus or Quintilian, would not criticize, the kind of speaking which Cicero

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Plutarch

- Cic. Fin. 2 somewhere calls popular rhetoric, and which Homer in the third book of the *Iliad* says Menelaus employed—not verbose or discursive, but compact and clear. In accordance with the teaching of Brutus Rhetorica 3 Cicero (who makes mention of Menelaus in this connection), of Aristotle and other rhetoricians, I call that style compact which is marked by restraint. I should like the style of the ambassador to be similar to that which Cicero in his *Orator* postulates for philosophers: impeccable, restrained, and with a sort of virginal purity—conversation rather than oratory. I should not require our spokesman to be 162 superior to the orator Scaurus, Catulus the Younger, Servius Sulpicius, or others of their class. If the ambassador has dignity in expounding his mission and expressing his opinion, if he has a certain natural impressiveness, if he has prudence, if his manner of speaking has some measure of elegance and erudition, and in short, if he has enough eloquence to enable him to perform adequately the duties of his office, nothing more, in my opinion, should be demanded of him. This is my view, and it is besides the final judgment of the greatest ambassador whom I have ever known. I mean Francis Walsingham, whom I once heard expressing himself in favor of this view. Moreover, this was also the opinion of the ambassadors who on one occasion warned Belisarius that long speeches should be omitted, in order that the business might be transacted with dispatch. With this style of oratory let our ambassador plead, beseech, and allure. Tasso compares an ambassador to a go-between, while the divine Plato in the *Gorgias* compares a certain orator to a cook. Plautus has somewhere introduced the same comparison. I am inclined to think (I am not certain, for I am recalling the earliest studies of my boyhood) that Justin does the same, since in one passage he writes that go-betweens were sent by a certain king, and he later calls the same men ambassadors. Certainly Socrates in the *Symposium* of Xenophon avows that he has more confidence in allurements than in anything else. That is the art of winning friendships, which is the greatest art of ambassadors. I have not yet spoken of the things in this connection which should particularly be kept in mind by the ambassador, when announcing the purpose of his embassy. But Aristotle has Ch. 29 elaborated these in his *Rhetoric to Alexander*, and I shall on that account refrain from the task.

Procopius, Bel-
lum Gothicum 2

Plaut. Mil.

The Ambassador Should Understand the Language of the Person with Whom He Is Negotiating

Our spokesman should also know the language of the person to whom he is accredited as ambassador. This removes many disadvantages and carries with it many advantages. To begin with, a spokesman who does not understand the language of him whom he is addressing is always rated as a barbarian. "We are all deaf," as Cicero says, "in languages which we do not understand." What if there is no chance of an interpreter, as may possibly be the case? Let us recall what we wrote in the last book about Themistocles' treatment of the interpreter. Caracalla, as we are informed by Dio in the *Selections on Embassies*, more than once put interpreters to death in order that the business transacted might not become known through them. But assuming that it has been permitted, and is permitted, to employ an interpreter provided by the ambassador himself, how precarious it is to trust either his integrity or his ability! Will he who grants the audience be as much impressed by the personality of the interpreter, who is the speaker, as he would be if he heard these things from the worthier lips of the ambassador? There is also the other disadvantage, that the ambassador cannot learn from the interpreter with any degree of precision (even though the latter be honest and shrewd) what sort of reply has been made to the address. I omit Plutarch's narrative of Demosthenes' experience with the satyric actor: things that were the same seemed wholly different when the actor recited them and when Demosthenes recited them. Granting for the sake of argument that the interpreter (which is impossible even if the interpreter should be a Sergius who, according to Agathias in his fourth book, did this sort of thing better than anyone else) translates the ambassador's words exactly, it is obvious that he can not reproduce that energy of the voice and those subtle nuances of feeling which are characteristic of oratory. Furthermore, when another does the speaking, how is the ambassador to observe those signs of feeling which we know are manifested by all auditors, and which can be noted properly only by him who is making the plea or who understands every single thing included in it? Why is it that wise physicians prefer to see and speak to the patient rather

Cic. Tusc. 5

Ch. 15

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Cic. Tusc. 5

Ch. 15

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fourth book of Livy. Our ambassador ought to understand three languages (as Ennius did, who on this account was called the "triple-minded"), and if he can, one or two more. I do not consider this a very difficult undertaking for men who are not compelled to go minutely into the scientific aspects of the subject, and who have abundance of leisure and all the other advantages by which such accomplishments are usually acquired. Themistocles learned the Persian language in a year, and let us cite him in support of the conclusion we have reached, for he learned to speak Persian because he was going among the Persians with a view to conducting negotiations with them. Since we have said a good deal on this subject, I shall conclude the chapter by mentioning an achievement of Demosthenes. He, going all over Greece as an ambassador and making stirring speeches in all the states, induced the Thebans, who were opposed to the war, to take up arms against Philip. Could he have achieved this result through an interpreter? And with the interpreter, just as we began, so let us finish.

Thucydides 1

Plutarch

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CHAPTER VIII

A Wide Knowledge of History is Required in the Ambassador

We consider a knowledge of history also as desirable for ambassadors. For though I refrain from celebrating its infinite glory, the ambassador will certainly gain one thing from a knowledge of this subject: while reading of the actions, speeches, and successes of so many ambassadors, he will in a sense be performing the duties of innumerable embassies, and will emerge from the study not only with learning, but with skill in establishing a norm for his own conduct. Our wisdom is nothing else than the observation of results, and knowledge of the present and prescience of the future are drawn from the past as from a fountain head. This is the very thing which the ambassadors of the Lombards say in the third book of Procopius' *Gothic War*, and men of judgment everywhere have been in the habit of asserting that he who wishes to discern the future should study the past. "The future," says Aristotle in the second book of his *Rhetoric*, "for the most part conforms to and resembles the past." And in his first book: "We conjecture the future from the past, and so form our judgments." Through all mortal affairs, through the infinity of the ages runs a certain similarity, for those who participate therein are always men of the same type, retaining the same nature and the same emotions forever. It is inevitable, therefore, that the same results should appear. The truth of my words is manifest from observation also. To what extent do we find change of customs in individual nations? Either not at all, or in a very slight degree. The heavens and the earth are so organized that one nation has methods of one kind, another of another, as Hippocrates, quoted by many others, has shown us; and Livy gives a fine treatment of the subject in connection with the consul Manlius in the thirty-eighth book. In the fifth book, while discussing the Rhaetians, he speaks from his own experience; and again in the forty-fifth book, when treating of others. Elsewhere also, although it is inconsistent with his former position, he has nevertheless expressed himself in favor of our view that a change of locality does not change one's native tendencies or character, and that the nature which is born in one can not be overcome by the character, so to speak, of the locality. Observations identical with these about the influence of locality and

Aristotle,
Rhetorica ad
Alexandrum 2
Macchiavelli,
Observ. in
Liv. 3. 43

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De aëre, aquis,
et locis

Bk. 37

Herodotus 9
 Plato, *Leges*
 Polybius 6
 Cic. *Leg. agr.*
 Plutarch,
 Pompey
 Curt. 8
 Cic. *Acad.* 2

climate have been left us by Herodotus, Plato, Polybius, Cicero, Plutarch, Curtius, and others, as I have said. Since, therefore, the sky and the earth forever remain the same, the manners of the nations will forever remain the same. I know that much is being contributed by education and by custom; but this contribution is not of such a kind that the nature of things is changed, for what is implanted in one by nature can not be overcome by the character, so to speak, of the locality. Yet why pursue this topic at greater length? He who is skilled in history will know the past, and have knowledge of the present. For I want the ambassador to study not ancient history only, but modern history as well. He will not therefore be obliged to resort to those conjectures I have mentioned, sound as they are. He will have acquired a thorough knowledge and mastery of contemporary history, not through speculations based on the past, but by studying the present. Lucullus, though he had no experience in military matters when he left

- 170 Rome, was able to assume the duties of commander-in-chief by the time he reached Asia. He was enabled to do this through efforts, which, though carried on for a few days only, were similar to those through which we assert one can become an ambassador. Is there any doubt about the matter? Unquestionably it can not be denied that one who has had training in history will be much more likely to become an excellent ambassador in a few hours than he would in many, many years, if he were deprived of the assistance furnished by that study. Look at me. I offer myself as an example, however poor the example may be. From a perfunctory and very brief perusal of history I have been able to set down these observations and precepts, which I do not believe will be wholly useless. What then will one be able to do who will devote all his energies to this field, and who on that account will cover a wider range of history and study it more carefully? I have no doubt that he will be an excellent ambassador even before he ever undertakes any embassy. Nor will he be a "dry land sailor," to use Galen's phrase. If he is, he will be considered a fool, just as Hannibal said that the philosopher Phormion was a raving idiot because, although he had never been on a campaign, he had the assurance to argue about military matters with him, who was a soldier and one of the most distinguished of generals. For our ambassador will not come to his embassy equipped with the fallacious theories or calculations of men, but will enter upon the post assigned to him with information gained from the unerring test of facts. He will already have studied the situation, will have given every phase of it careful consideration; more than

Cic., *De orat.* 2

that, he will have visualized and all but visited the scene of his duties. For if he has studied history, he is stationed, so to speak, on a watch tower or mountain top, from which he can look down easily on the plains and valleys below, see all who traverse the lower levels, and observe their coming and going. So when he descends and proceeds along any road, he has definite information about the easy and the difficult places, the straight and the winding ways. He will fare with success and honor upon the journey that he has planned and undertaken. Undoubtedly history has one advantage over all other sciences: it provides us with both theory and practice. And since these claims are based on sound reasoning, why should I mention the fact that Alexander got his instruction from the history or myth, call it what you will, of the deeds of Achilles, or that the elder Africanus received his training from the story of the noble achievements of Cyrus? History is of the greatest use to ambassadors. 171

CHAPTER IX

To What Extent Is Knowledge of Philosophy Suitable for the Ambassador?

But it is necessary that we add to the knowledge of history that branch of philosophy which deals with morals and politics. This is in a sense the soul of history, for it includes and explains the causes of all words, deeds and issues, and so does not suffer historical knowledge to be a bare and empty thing, but brings it within the field of well-defined and useful practical experience. Nor in this connection shall I hesitate to speak of the most distinguished of his class, and to set up as a model for imitation Machiavelli and his precious *Observations on Livy*. The fact that some claim that he was a man of no learning and of criminal tendencies makes no difference to me. It is his
172 remarkable insight that I praise; I do not defend his impiety or his lack of integrity, if he actually had such faults. And yet if I, reviewing the book issued against him, take into consideration his position, if I give a just estimate of his purpose in writing, and if I choose to reinforce his words by a sounder interpretation, I do not see why I can not free from such charges the reputation of this man who has now passed away. He was not understood by the person who wrote against him and he has been calumniated in many ways. There is no doubt that Machiavelli is a man who deserves our commiseration in the highest degree. He was a eulogist of democracy, and its most spirited champion. Born, educated, and attaining to honors under a democratic form of government, he was the supreme foe of tyranny. And so, naturally, he did not favor the tyrant. It was not his purpose to instruct the tyrant, but by revealing his secret counsels to strip him bare, and expose him to the suffering nations. Do we not know that there have been many princes such as he describes? That is the reason why princes of that type object to the survival and publication of his works. The purpose of this shrewdest of men was to instruct the nations under pretext of instructing the prince; and he adopted this pretext that there might be some hope that he would be tolerated as an educator and teacher by those who held the tiller of government. But this discussion will not be protracted further. If our plan is to interpret authors favorably, we shall palliate many faults in this man also, or we shall at least tolerate in him those that we tolerate

in Plato, Aristotle, and others who have committed offenses not unlike his. Moreover, we shall bear them because he also has far more good qualities than bad. He has the characteristic which is the subject of our present inquiry: in reading history he does not play the grammarian, but assumes the rôle of philosopher. And undoubtedly history and philosophy are mutually dependent. Without history a philosopher seems to me like one who, although he starts right, is soon unable, because he walks in darkness, to determine definitely where he is. Nor can he find the good things which appear only after the sun has risen. The historian, on the other hand, walks in the bright light of events, but lured from the path by the tempting prospect opening up on all sides of him, he inevitably advances rashly and at haphazard. For if in planning any action he desires to proceed according to the many precedents which he has observed, tell me which one he is to follow. He will not produce a single precedent, the converse of which is not forthcoming, as may easily be seen from the subjects we treated in our last book. It is, therefore, philosophy which will render judgment in regard to precedents, and it was jurisprudence, a branch of philosophy, which in our discussions of the right of embassy weighed precedents with delicately balanced scales. We shall weigh them in all the rest of the discussion too, if any portion of this virtue continues to abide in us. Socrates, moreover, used to say that it was disgraceful, without knowledge of the subject, to cite opinions, that is, to set forth the deeds and views of others but to be unable to express what we ourselves think and believe to be right. Philosophy will enable us to do this. History, when combined with philosophy, I accept, commending her because she gives her orders like one who is mistress of the situation, without hesitation or flattery, and shows us plainly what we ought to adhere to and what avoid. I do not tolerate her otherwise. A philosopher, who has not a sound knowledge of history, I do not tolerate as an ambassador. Such a man would be called a child by Cicero. Plato would term his advantages meager and slight. Shrewd thinkers inform us that even statesmen who have acquired some slight familiarity with philosophy become wholly useless in the government of the state; they are lacking in intelligence, are bereft even of common sense, and are incontestably proved by daily experience to be less adapted for administration than others. Nor do I see that the remarks which Callicles, speaking for Socrates, somewhere makes on this subject, or the things which Socrates himself says, furnish any answer. Whether the fault

Plato, Rep.
Aristotle,
Politica 5

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Plato, Rep. 6

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Agathias 1

Phaedo

Plato, Gorgias,
Theaetetus

Plato, Rep. 6,
Hippias Maior

Curt. 4. 9

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Giovio, Vita
d'Adriano
Sesto 6; Vite
di Huomini
Illustri 3;
Vita di
Sforza 8

is in the vulgar herd, which is unwilling to employ the philosopher, or in a certain infirmity of mind which, caused by their devotion to philosophic studies, disqualifies them for state affairs, or in some other thing, we see clearly enough that the specialist in philosophy is ill-adapted for responsibilities of this kind. Those therefore who, influenced by the precedent of Alexander and his like, insist that the man in public life should be versed, and profoundly versed, in the whole range of philosophy are absurd. In their folly they are not aware that Alexander was wholly lacking in information about the eclipse of the moon, the flow and ebb of ocean tides, and doubtless about many other things of a similar nature. Nor would I criticise so young a man for being ignorant of causes which escape even the greatest philosophers. If I did so, I should be inconsistent with my former position, insomuch as I have claimed that nothing of this kind is required in a statesman. It is something else that is wanted in an emperor, as Pollio says after telling how Gallienus distinguished himself among the literary men. The same point is brought out clearly in the very sound speech of Marius in Sallust, and of someone else in the ninth book of Livy, not to cite more witnesses. Shall I mention men who have attained great distinction in spite of being wholly illiterate? Charles V in our time, Consalvi the Great, Sforza of Milan, and innumerable men of great fame in the arts of war and statecraft have been of this kind. Sforza, in speaking of the fact that he could not even write, used to say that it would have been impossible to learn the strokes of the pen with the same hand with which he had learned to wield the sword. Our statesman can say with good effect that, although devoted to the pursuit of state affairs, he never has had any time for reflections and speculations of other kinds. The same principle applies to ambassadors as to statesmen and princes, for the ambassador is a statesman and is invested with the personality of his prince.

CHAPTER X

Ambassadors of Literary Attainments

I should like to linger a little longer still on this subject. Why, some persons will ask, do you not include literary men, since a great many litterateurs of distinction have performed the duty of embassy? Hear this list, which is drawn from almost every class of scholars. Theologians have performed the function of embassy: Augustine, Chrysostom, Gregory, and others, as they themselves and the church histories tell us. Men to whom we apply the general term of philosopher, from almost every school of thought, have executed ambassadorial commissions: Archelaus, Critolaus, Menedemus, Xenocrates, Arcesilaus, Theodorus, Crates, Aristotle, Carneades, and Diogenes. The two latter, according to Cicero, were summoned from their schools, although they had never participated in any kind of public life. Why should I mention more? Shall I cite the rhetoricians, sophists, grammarians, physicians, and jurists? There has been no class of literary men which has not taken part in these activities. But it would be tedious to quote the testimony of authors in detail. Those who wish to oppose the view which I am presenting will, I suppose, do so, and they will add as a finishing stroke the well-known theory which Plato sets forth in his seventh *Epistle* and in the fifth and sixth books of the *Republic*, that philosophers and no others will be efficient in the administration of such an office. This theory they will support by some cases of actual practice: Epaminondas and the other Theban philosophers, and the state which flourished as long as philosophers were at the helm; Dio and his army of philosophers; and they will collect similar examples to confirm their own words and refute mine. I, however, do not advocate the summary dismissal of literary men. On the other hand, I do not want a highly elaborate literary training, and, if you please, am even opposed to it. My reasons are sound. For the embassies of all those whom I have called philosophers were such as could be transacted by men of this sort. Do I not know that even women have executed the function of embassy? I regard as the best ambassador the man who is equipped for all kinds of embassies. Is one who is buried in books, of this type? If he is, then assuredly an owl, when exposed to the light, can see. Even Aristotle's political views have been censured, and the cause of his

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Diogenes
Appian
Plutarch
Zosimus
Procopius
Gellius
Xenophon
Plato
Cicero

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Bodin,
Methodus
historica 4

errors should be referred to the fact that he was not at all versed in the management of state affairs. What will happen to others deeply immersed in literary studies, whether it is an embassy that must be undertaken or something else of the kind that is to be done? But when I order scholars to refrain from embassies I do not mean all scholars. I am not of the opinion that the ancient jurist Servius or in modern times Bartolus, Butrius, Jason, Budé, Guicciardini, and others who have undertaken embassies were not adapted for the work. I should not consider Cicero an incompetent ambassador; the Roman Senate regarded him as very competent. Who would not consider Demetrius Phalereus and Ermolao Barbaro good ambassadors? In regard to the former, Tully, and in regard to the latter very recent witnesses affirm that they were excellent, both in their pursuit of learning and in their administration of state affairs. I do not include them and others of the kind in my general criticism, for they give the impression of men who walk in the sunlight; and so in spite of their literary pursuits their minds can always be brought to the responsibilities of public life, especially if their literary activities are not widely divorced from those responsibilities. Of this type were the studies of Demetrius, Cicero, Servius, and the others whom we just mentioned. Their pursuits were ethical, political, and legal, and such pursuits we approve of. This only we desire to add in accordance with the counsel of Neoptolemus (let Cicero dissent as he will), that they ought not to lay any special emphasis on acquiring proficiency in these studies, or on using such proficiency as they already possess. For in civil law why should the ambassador wish to master the almost innumerable details pertaining to private law, to forensic practice or to some other well-defined department of administration? If he already has knowledge of these things and then wishes to make use of it, will he not be laughed at, as Scaevola was, whose very stupid advice on the occasion of the Gracchan disturbance was based on civil law and is censured by Valerius in the second chapter of his third book? The Emperor Julian was also ridiculed, because he wished to base his contention with Severus for the empire on civil law, as if in accordance with an interdict. There is one law of the court, another of empire. Civil law, which even now retains many traces of this public law and includes principles of wide application and of sound theory for both codes, will be of service to the ambassador so far as these principles are concerned. But a knowledge of them will be sufficient; all the other things are useless and ill-adapted for service. The Peripatetic system which Deme-

Cic. Tusc. 1
Gell. 5

Spartianus, Niger

trius followed will also be useful to the ambassador, for it is founded not on idle speculation but on actual experience of affairs, and so is excellently adapted to the transaction of business. Cicero more than once rightly remarks that distinguished men who have been trained in this school have often conducted affairs of state. The other schools will contribute nothing at all to this field. Do you not see that Musonius, who, when ambassador of Vitellius and the Senate, went among the troops of the Flavians discussing the blessings of peace and war from the Stoic point of view (he affected the tenets of that school of philosophy), was regarded as a joke and a bore with his unseasonable wisdom? Why should I mention Coriolanus, who was a Stoic by nature? Or Cato? Dionysius in his eighth book properly disapproves of the harsh philosophy of the former, and others regard the severity of the latter as senseless. Is the Academic philosopher, who will never state definitely what ought to be done, competent to handle affairs of state? In regard to the other schools, there is no reason why a single word should be said, for they are all effete, objects of wise men's scorn. The Epicureans were opposed to this kind of life, and so were the Stoics. I want our ambassador, therefore, to be a legal, ethical, and, from the Peripatetic point of view, political philosopher. But only to a moderate degree. I don't want him produced from the shades of the schools: I want him educated in practical politics and in the administration of high offices. I want all his literary studies, without exception, to bear on this, for even Plato regards those philosophers who have done otherwise as very incompetent. And (that we may proceed to other things) I am of the opinion that Epaminondas, Dio, and the rest of those men were of this type. So I accept Aristotle's view, who in the second book of his *Rhetoric* attests that the study of philosophy gives an edge to men's foresight.

Cic. Acad. 2;
Fin. 5

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Tac. Hist. 5

Erasmus,
Moriae
encomium

Plutarch,
Adv. Coloten;
De repugn.
Stoicis

Rep. 7

The Fidelity of Ambassadors

- We have now reached the point where we must discuss those virtues (for Plato would perhaps call all the qualifications mentioned hitherto graces and refinements) which we think especially desirable in the ambassador: fidelity, fortitude, temperance, and prudence. To these virtues the mind of the ambassador must be molded and trained: to fidelity just as the body to comeliness, to fortitude as the body to vigor and strength, to temperance as the body to health, and to prudence as the body to acuteness of the senses. The beginning of these virtues is derived from nature, but the middle and the end from diligence; and just as the characteristics of the body are said to be acquired by the aid of gymnastic and medical treatment, so the qualities of the mind are attributed to the benefit of instruction and philosophy. In regard to fidelity, we have reached the conclusion that nothing more splendid, nothing fairer and more beautiful can be found. The ambassador ought to have a superabundance of this virtue, for the prince has intrusted himself wholly to his fidelity.
- Epistolae 10 "He who shows good faith," says one man, though a barbarian, "has a claim on good faith." Demosthenes effectively turned this point against Aeschines by insisting that there should be no half measure of this virtue in the ambassador in whom those dispatching the embassy have put their whole faith. So he will win the Wise Man's praise: "The ambassador of irreproachable fidelity practices a healing art." And again, "As the cold of snow in the time of harvest, so is a faithful messenger to them that send him, for he refreshes the soul of his masters." The enormity of the offense which forms the opposite of this virtue is clearly seen from the fact that not the slightest deviation from the latter is permitted. What is more serious and more horrible than treachery? Read the second book of Xenophon's *Hellenica*, Cicero's speech for Sextus Roscius, and the second and eighth books of Dionysius' *Antiquities*. Moreover, it will be distinctly worth while to recount the punishment exacted for treachery in the execution of an embassy. For in this way it will be shown that God watches over this office with special vigilance, not suffering perfidy to go unavenged, but punishing it with the utmost severity.
- Plato, De anima mundi
- Livy 22
- 181
- Prov. 13, 25
- Plutarch, Lucullus
- An illustration is furnished by Metrodorus, who was sent by Mithri-

dates to Tigranes to persuade him to make war on the Romans. When he was asked by Tigranes what he himself would advise in the matter, he answered that as ambassador he would advise the plan which he had set forth, but as a counselor would oppose it; for this he was sent back to Mithridates and justly punished. Alexa, the ambassador of Antony to Herod, paid a similar penalty for a similar offense. Timagoras was put to death by the Athenians for the same kind of treachery. But why should I enumerate individual cases? In the instance of Logbasis, the ambassador of the Selgians, the judgment of divine wrath blazed forth with dire fury, and both he himself and his whole family were cruelly and suddenly put to death for the betrayal of his embassy. The right of embassy was vindicated with such severity that it was vindicated even in the case of his children. Take this example, drawn from a different sphere. The sons of Antimachus, after supplicating Agamemnon in vain, were put to death because their father uttered the warning that Menelaus, setting out as an ambassador to Troy, was doomed to die. Very true, therefore, are the words of the Wise Man: "The wicked messenger falleth upon evil." Moreover, I am inclined to think that I should mention among these Atilius Regulus, who was put to death with exquisite torture by the Carthaginians, undoubtedly for the reason that he acted contrary to the instructions of the embassy on which he had been sent to Rome, and which he himself had undertaken to perform. To be sure, the fortitude of Regulus should be praised, as well as the fidelity he showed by returning to Carthage as he had promised; but he certainly seems to deserve censure for speaking in opposition to the mission which he had undertaken; and on this account he was justly punished by the worst kind of death. He betrayed his embassy. But someone, for the purpose perhaps of excusing the action of Regulus, will make the objection that love of country overrides every law. His view would be sound, if the excuse were a good one. My own opinion is that an embassy should be declined rather than after acceptance be betrayed for any reason. That a promise given even to the enemy should be kept, can not be questioned. The other problems which remain to be discussed in connection with the fidelity of ambassadors, we shall explain in that part of our work where we shall show its relation to prudence. At present we are discussing these virtues in a somewhat elementary way.

Plutarch

Xenophon,
Hellenica 7

Polybius 5

Iliad 2

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Appian 8
Flor. Epit. 2
Aur. Vict.
Others
Cic. Off. 3

CHAPTER XII

The Courage of Ambassadors

Another virtue with which we have said the ambassador ought to be endowed is courage. Nor is there any reason why one who is
183 guarded and protected by so strong a right should not perform his duties fearlessly. At the same time it is the ambassador's duty to prove himself a brave man, if anything untoward should occur. As the numerous precedents available have given him an opportunity of considering the possibility of his not finding the right of embassy inviolable in the country to which he is going as ambassador, so it will be held that he has promised to perform his duty in spite of violence
Cic. Phil. 9 of any kind. I do not think that the remark which Cicero made on some occasion or other is true, that ambassadors, with the single exception of Servius Sulpicius who had been sent to Antony, used to set out on their missions without any fear of death. Why should not everyone fear that which he knows has frequently happened to ambassadors? Cicero merely wished to represent Antony as exceeding all men in brutality. Our ambassador, therefore, ought not to be self-confident, but should consider the possibility of his going to someone as bad as the King of the Elaei, whose habitual cruelty to
Constitutions ambassadors is described to us by Heraclides. He should keep in mind the men (and there are a great many of them) to whom we have referred in the fourteenth chapter of the last book, who violated the sacred right of embassy in more than one way. He should keep in mind Marcus (as Paterculus calls him in his first book) or (according
Cic. Phil. 8 to Cicero and Livy) Gaius Popilius Laenas, whose conduct would have been marked by far less distinction, if he had not had clearly in mind, before the brave deed by which he devoted his life to the state, the possibility that death in so cruel a form might be his lot. This act of Popilius is a deed of great courage, which far surpasses all the achieve-
184 ments of mere boldness. Let the ambassador think of this man who, he knows, was put to death; let him think of others; let him think of the rest of the perils and steel his soul against them. To rely on right only is highly dangerous in critical contingencies, for, our minds being unprepared, we are confused by things which we have not taken
Dio Cassius 42 into consideration. "Whenever," says Dio, "anything happens contrary to our preconceived ideas, the mind fails and counsel is so troubled that at the time we are all accustomed to show a minimum

of wisdom in our deliberations." Plutarch says: "Not to think of these things but of one's right only, breeds recklessness, while at the same time it destroys self-reliance." Socrates (in the fourth book of the *Memorabilia* of Xenophon) says: "Over-confidence begets carelessness, and we are confused by unexpected events." This is also attested by Xenophon himself in his *Hipparchicus*. The ambassador should be impelled to acts such as we have mentioned not only by many other considerations but also by the examples of envoys whose courage has won the highest commendation, and by the honors which have been bestowed upon those who have suffered death or some other injustice in the brave performance of the duties of their embassy. Was Popilius put to death? Yes, but, as Cicero says, in place of life's brief span his fellow-citizens gave him a lasting memorial in the form of a column erected on the Rostra. For Pliny is wrong (as Barbaro writes in regard to him), when he says that this was not done for Popilius but for Octavius. It was a statue that was erected for Octavius by our ancestors in return for his life—a statue which would do honor to his posterity for many years. We have spoken elsewhere about other men and other honors, for these, in accordance with the custom of all nations, have invariably been bestowed upon brave ambassadors. Our ambassador, therefore, can rightly expect the same or a similar honor. It is his due, and a man who has deserved well of his fellow-citizens can very properly expect what is his due. Therefore, ambassador, by your most sacred right, by that courage which it is your duty to show, by those honors which you look forward to, imitate and bravely emulate these numerous instances of heroic ambassadors. Look now at the other examples which I point out to you. Call to mind Iphicles, the Epirote ambassador to Valentinian, Epaminondas, the ambassador to Agesilaus, Clodius to Tigranes, the centurion Casperius to Vologeses, King of the Parthians, and that other centurion Cornelius who, when the Senate hesitated to confer upon Octavian the consulship which he requested, threw back his cloak and, placing his hand upon the hilt of his sword, said: "This will elect him unless you do." Recall the Persian Agis, who, when Crassus spoke in a threatening manner of seeing something or other at Seleucia, raising his hand and pointing to the middle of the palm, exclaimed: "Hair will grow on this palm before you shall have an opportunity of seeing Seleucia." But I shall enumerate no more brave deeds of ambassadors to you, our ambassador. You yourself, since we know that you are well versed in history, will attend to this. I shall now discuss temperance.

Plutarch,
Pericles and
Fabius

Plin. Hist.
nat. 34. 6

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Amm. 30

Plutarch,
Agesilaus,
Lucullus
Tac. Ann. 15. 5
Suet. Aug.

Plutarch,
Apophthegmata

CHAPTER XIII

The Temperance of Ambassadors

Aristotle in the second book of his *Nicomachean ethics* and in the first book of his *Magna moralia* teaches us that temperance is a sort of mean in pleasures; not, to be sure, in all pleasures but in those of the body, and especially in those which depend upon the sense of touch. In fact I should say in these alone, following the trend of

186 Cic. Off. 1 *machean ethics*. Cicero, however, with somewhat greater latitude interprets this virtue as the quality which is seen to impose a seemly limit on things, whether it manifests itself in controlling and checking the pleasures of the body or those of the mind. Plato in his *Symposium* says: "It is universally agreed that temperance consists in mastering pleasures and desires." He gives the same definition in the *Phaedo*. There are some who maintain that temperance is the mother and the norm of all the other virtues. Each of these definitions is based on sound reasons. So I may follow Cicero, or even Plato, who

Scaliger, Art of Poetry 3 in the third and ninth books of his *Republic* interprets this virtue in precisely the way I should want it interpreted as the quality which restrains us from avarice, gluttony, sensuality, and other allurements, and in short bridles and masters the concupiscent element in its manifold and varying forms. So what Aristotle thought could scarcely be brought under the head of liberality, we have ascribed to this virtue. I mean refraining from the acceptance of presents. Moreover, the ambassador ought to refrain, since he who has once accepted presents and been corrupted by bribes can not (as his adversary cried out against Aeschines) any longer be a steadfast judge of the public good. However well he may seem to have executed his embassy, he shows that his actions ought not to be trusted and in fact can not be. God's

Deut. 16 187 warning to persons of this kind is: "Do not accept a gift, for it blinds the eyes of the wise and perverts the words of the just." He who receives money from anyone makes him his master, as Xenophon quotes from Socrates in the first book of the *Memorabilia*. I refrain from accumulating further evidence. The orator to whom I have referred, inveighing bitterly against Aeschines' style of oratory, as I suppose, said: "A speech should not be delivered, Aeschines, with the hands concealed in the folds of the robe, but an embassy should

be executed that way.” What objections will the ambassador have to this? Valerius reports that certain Roman ambassadors, although they accepted presents, deposited them in the public treasury even before they reported to the Senate on their embassy, being of the opinion that nothing should ever accrue to private citizens from a public service, except praise for having done their duty well. But they are not the only ones who have held this view. To sum up, the contention that ambassadors ought to refrain from accepting presents is clearly established by the fact that the laws of all nations have provided against the practice, as we have noted in the final chapter of the last book. Here we add the case of the Corinthians, whom we did not mention there. We add besides from Roman history Sallust’s report of the bill introduced at Rome against those who had received money from Jugurtha, while they were on embassies. The ambassador must abstain from dissipation also, for (not to discuss the vice of intemperance in general) what if he should happen upon some Philip or Bonosus? Do we think that the ambassadors of the Thebans, whose temperance Demosthenes praises, would have been able to refuse presents and continuously retain their incorruptibility if they had not, much to Philip’s chagrin, remained sober in the midst of the King’s debauches? Bonosus had been accustomed to get ambassadors drunk that he might become fully acquainted with all their secrets. The killing of the Persian ambassadors by the son of Amyntas is a warning to all ambassadors to abstain scrupulously from wine and illicit desires. Herodotus has the story. I do not approve of the young man’s deed, which was severely criticized at the time, but I am pointing out real perils. Josephus, in the seventh chapter of the sixteenth book of his *Antiquities*, narrates that something similar happened to the ambassador of the Arabs at the court of Herod. Xenocrates, the ambassador of the Athenians, was so anxious to avoid this or a similar experience, that (so the story goes) he was unwilling even to taste anything, until he had explained the purpose of his embassy, which had been sent to Antipater about the ransoming of captives. When invited to a banquet by the king, he quoted the following verses: “What prudent man, O Circe, would desire, or saner still, could ever bear to touch drink or food, before comrades are released, or one and all are restored to me?” Laertius also reports that this man, together with others, executed a mission to Philip, and was the only one (Philip himself bears witness to it) who returned to Athens uncorrupted by banquets and gifts, where on this account he was accorded

Val. Max. 4. 3

Plutarch,
Apophthegmata

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Vopiscus

Herodotus 5

Appian 12 great honors. The case of the Roman ambassador Gabinius is not unlike this, and there is that of Antalcidas in Aelian. But enough about
 189 temperance here, for I have not formed any resolution to discuss in detail all the phases of this virtue, or to quote all the examples which have been handed down about temperate and intemperate ambassadors, or even to cite that ridiculous example which Livy in his fortieth book mentions in connection with the Celtiberians. We want the ambassador to pursue temperance in such a way that he shall never at any time, by word or deed, compromise the dignity of the office he is filling. In regard to refined and vulgar witticisms, sayings, jests, jokes, and quips, Cicero, Plutarch, and Castiglione have written with learning and abundance of detail. The gibe made at Demetrius' expense by his ambassadors at the court of Lysimachus assuredly
 Plutarch, Quæstiones conviviales 1 reached the point of being disgraceful. When the latter was showing them some scars which he had from the bites of a lion, with which he had once fought by the order of Alexander, the ambassadors said to him: "Our King also has on his neck the scars of dangerous bites, which the wild beast Lamia (this was the name of Demetrius' mistress) has given him." These men, insomuch as they were willing to make their Prince the butt of a joke, were guilty of insulting him. I shall now proceed to speak of prudence.

CHAPTER XIV

The Prudence of Ambassadors

In regard to prudence, by which I here mean the virtue that manifests itself in a shrewd analysis of the truth, I lay down the principle that it seems to be specially requisite in an ambassador. For he is not merely thought of as a bearer of messages, but is also called a judge of affairs, and (as the noble Venetian has advised us) ambassadors are the ears and eyes of their government. This is just the same as saying that the rôle assigned to the ambassador is one that calls for the highest prudence. For it is the part of the prudent man to discern cleverly the truth in every situation, and not to waver, err, or be deceived or ignorant. The Egyptians used to symbolize alertness by a picture of the ear; vigilance and prudence by a picture of the eye. The Wise Man, moreover, compares the foolish messenger to one obliged to walk without feet. The ambassador, therefore, should strive to excel in this type of virtue, and he will easily excel, provided he does not lack resourcefulness in emergencies, and never treats the unknown as the known. He ought not to assent to things at random, but should devote time and care to their consideration. For everything (as Fabius used to say) becomes clear and well-defined to him who does not hurry. Haste is improvident and blind. Plato in his *Politicus* calls it the step-mother of knowledge, and that Aetolian magistrate says that there is nothing so hostile to counsel as haste, for swift as repentance is, it always lags behind, too late to be of any use, since plans hastily undertaken cannot be revoked or annulled. In situations therefore where time is allowed, nothing should be done hastily. For when action is needed, it should be something definite, on which an agreement has already been reached, as Crito admonished Socrates. These are the sinews of wisdom. Nevertheless, we must see to it that there shall not be delay, as if there were no business at all on hand. For although it is the part of the wise man not to believe precipitately, yet, as someone else has said, not to believe at all is not conducive to the transaction of business. Otherwise, that distinguished Senator would have been somewhat infelicitous in comparing the ambassador to ears, for these seem to signify an alert man, one intent on doing something, unless of course he wished to indicate that the ambassador should do

Cic. Off. 1
Plato,
Hippias Maior
Demosthenes

Guicciardini,
Storia
d'Italia 15
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Horus

Prov. 26

Livy 22

Livy 31

Epicharmus

Polybius 8

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Livy 22, 27
38, 42
Eustathius on
Iliad 1
Plato, Leges 13

Code, 4. 63. 4

Aristotle,
Rhetorica 2
and Ethica 1

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Odyssey 1

Leges 12

the work of a spy. This is not wholly improbable, for we hear of many ambassadors whose instructions included directions to play the part of spy, and find out everything possible about the affairs of the sovereign to whom they were accredited. Perhaps this is not open to criticism, since Plato insists that there should be spies in his republic. Henry VII of England realized that this was the situation, and they say that on this account he never allowed resident ambassadors in his kingdom. Why do Venetian ambassadors fail to acknowledge this openly, since it is their custom on returning from an embassy to omit mention of nothing which pertains to the state in which they have been serving as ambassadors? For my own part, however, I have never approved of this sort of thing in ambassadors, and the Emperors Honorius and Theodosius warned their ambassadors not to pry into the secrets of a foreign kingdom. Let our discourse, therefore, confine itself to the true virtue, prudence. In order to be sure of the ambassador's having prudence, I should want him to be a man of mature age, and with experience in foreign travel. I should require these qualifications in addition to that which we have already mentioned: that he ought to be one who has had long training in public business. The view which we have expressed in regard to age not only conforms to the terminology of the Greeks, who, we are told, used the same word for old man and ambassador, but also assumes certain definite characteristics in young men: that they are unsophisticated, gullible, easily hoodwinked, and rightly judged to be without that practical experience of life which is the basis of sound reasoning and the determining factor in the development of prudence. What of the other qualification I have mentioned? In the first book of his *Rhetoric*, Aristotle emphasizes the usefulness of foreign travel, and no one denies it. When Homer wished to depict Ulysses as the most prudent of men, he sang of him as one acquainted with the customs and the cities of many peoples. Why should we send to foreigners one without experience in foreign affairs? By one who has traveled, however, we mean one who gives such indications of his travels as show him to be a man experienced in foreign ways. For merely to have been abroad, without having made any effort to acquire knowledge along this line, is of no significance. I should not think that young men could bring back information of this kind, and Plato is certainly of this opinion, inasmuch as he flatly forbids anyone younger than forty to travel abroad. Moreover, the Chalcidians (Heraclides tells us in his *Constitutions*) had a law that no one should

undertake an embassy, who was less than fifty years of age. I myself, while I should certainly be opposed to the matter being deferred so long, believe that there should be a careful scrutiny of what is involved in the embassy, and that the decision in the whole affair should depend upon this. The Romans sent young men on an embassy to Jugurtha, and I know two, hardly more than boys, who have transacted ambassadorial business with the greatest distinction: Georg Khisl, Baron of Kaltenprun, a German, and Sir Philip Sidney, an Englishman—who rival one another in the outstanding qualities of their mental and moral endowment. For although I have not associated with Baron Khisl as I have with Sidney, I have heard a great deal about him from my father Matthew, who, while he was the physician of both the Carniolan duchies, was for many years on intimate terms with his illustrious father and the whole noble family. What does not report tell us of him? What do those manifestations of lofty intellect not show us? Why should I not, from one or two meetings, recognize the notable qualities of the man, just as I would know a lion from his claws? His and Sidney's were embassies of courtesy, and there is no reason why young men should not execute embassies of this class. In regard to the other embassies, which require a certain maturity of judgment—although I should make an exception in the case of Guicciardini, ambassador to the King of Aragon, and in similar instances—I should not dare to assert that anyone is qualified unless he has passed his thirtieth year, nor do I think that a younger man can with advantage go abroad. Beyond that year is the time of life which is approved by Aristotle, and is not disapproved by Plato. But this is not the place for me to discuss in detail the intellectual qualifications of the prudent ambassador. It is the place for stimulating the ambassador to the practice of that virtue. With this in view, therefore, I add that very great disasters can and do happen as the result of the imprudence of ambassadors. To prevent such contingencies, the ambassador ought to make heroic efforts to attend to and transact all his business with the greatest prudence. Shall I adduce historical material in support of this thesis? There is no lack of it. The Spartan ambassadors, sent to Athens for the purpose of making peace, were so imprudent as to listen to the treacherous advice of Alcibiades, and so brought back war instead of the peace which they were seeking and already had within their reach. Consult Plutarch. The same author writes that certain Carthaginian ambassadors blundered shamefully in not recognizing that the actions of

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Aristotle,
Rhetorica 2
Plato,
Epistulae 2

194

Plutarch,
Alcibiades
and Nicias

Bellum
Persicum 2

Livy 1

Dionysius 3

Diogenes,
Vita Platonis
Cic. Off. 1

Timoleon and Andromachus were intended to make it impossible for Carthage to provide immediately for the situation in Sicily and thwart the plans of Timoleon. They were deluded, and so deprived their country of a splendid opportunity to participate in Sicilian affairs; later they threatened in vain, receiving similar threats in return. But I shall be found tedious if I touch even lightly upon these affairs. The imprudence of a Roman ambassador furnished the Persians, as Proprius relates, with a good reason for making a coup. The imprudence of the ambassadors from Alba gave the Roman king the opportunity he desired, and as a result the Alban state fell. This is enough. We shall speak now of prudence, which, as Plato says in his *Crito*, is not an individual species of virtue, but the guide and mother of the rest. It determines the constitution of all the virtues. Plato and Cicero would define it as the science of taking advantage of suitable times for action, and as the fundamental principle of all sound procedure. It directs and regulates all the virtues. It will prescribe the limit for faith, lest this degenerate into superstition, or into impiety, the opposite of superstition. It will point out the times for, and the degree of fortitude, so that this shall not become hardihood or barbarity. It will inculcate a sound theory of temperance, so that this shall not turn into provincialism or some similar defect. Finally, it will manifest in itself that principle of the mean in which every virtue consists, for unless it sets a limit to itself, it will deservedly be regarded as craftiness.

The Prudence and Fidelity of Ambassadors

To resume in order the discussion we have already begun, let us now put to the touch-stone some questions concerning fidelity. No difficulty is involved in the first problem which presents itself: whether the ambassador, in order to prove his fidelity to his master, can diverge from his duty to God. It is wicked men, base slaves, and souls doomed to the Inferno who give voice to or harbor such thoughts as "the will of one's prince is his service to God and his religion." Accordingly, not even a resident ambassador should obey, if his sovereign should want him to do something which detracts even in the smallest degree from his obligations to God. For in every obligation by which one man is bound to another, the obligation which binds us to God should be made an exception, just as under the feudal system the obligations of a vassal to king or emperor have precedence. Feud. 3. 7

The ambassador, therefore, should write to his sovereign that for religious reasons he can not obey him. He should, however, have previously informed the sovereign about his religion, especially if there were reasons why the latter might have a wholly different impression in regard to his personal creed. For although the ambassador, in case the sovereign makes any request which is contrary to his religion, will not be open to censure if his religious beliefs are known, he will not escape just criticism if he undertakes an embassy when the king had a different opinion about him. But while no ambassador should be so mad as to prefer to sin against his religion rather than offend his king, nevertheless one, whoever he may be, who undertakes a clearly defined embassy which the law of his God 196 hinders his accomplishing, acts very badly. The other, who has stated his religious belief, will not violate his fidelity to his sovereign to so great a degree. Both are guilty of violation, but it is higher considerations which cause the violation. Claudius, according to Dionysius 11

Dionysius, comments effectively on the subject as follows: "To keep an oath sworn in regard to some evil act is impious; to break it is pious. For God delights in witnessing agreements in His name that are noble and righteous, but not those that are unrighteous and base." This is well stated, and it is confirmed by many writers in both codes of law, and by the evidence of other authors. Moreover,

in consideration of the great religious differences which characterize our age, the discussion of these matters is by no means useless. My own wish is that there should be such respect for the divine powers that the ambassador should at this juncture, if at any, consider it proper to disregard the distinction between his actions as ambassador and as Fabius. For the doctrine seemed vain even to the boor to whom this question is attributed: What will happen to Fabius after the ambassador has been sent down to Hell? The ambassador's personality is mixed, not double; and since in this mixture the right of God is the stronger, the other element should certainly be controlled by it. I am aware of the rejoinders that can be made to me about the Syrian, and about some in our own time. But the deeds of these men, afterwards unanimously disapproved of, can not occasion any difficulty in our analysis. The second question is whether the ambassador ought to obey his sovereign in negotiations, the performance of which is injurious to his reputation, his good name, and his dignity. Suppose the sovereign should order his ambassador to lie, break his word, or commit any disgraceful act of similar character. I place this question in the same category. For if these things were permissible in order to please the sovereign, would not other things be permissible also? Would it not be permissible for the ambassador to be a thief, an adulterer, a parricide, a monster—in a word, to be stained with every vice? We owe to our sovereign fortune and life itself, and the ambassador will gladly give up both to prove his loyalty to his master. He should not, however, abandon religion or virtue. I know very well how much these principles differ from the current code of morals. But I am depicting the ambassador, not as he generally is, but as he ought to be. Am I to approve of the ambassadors who in innumerable cases have been sent as spies? Am I to approve of those who are perfidious? Of those who are treacherous? Such men betray international law. Am I to praise the Romans, who sent ambassadors under pretext of establishing on a firm basis the kingdom of the young monarch Demetrius, but really to weaken it, and spy upon the affairs of Macedonia and Greece? Am I to tolerate the Syracusans, who, as Plato in the *Eryxias* (if the dialogue is his) reports, sent ambassadors to Athens for the sole purpose of destroying that state by fraud? There are countless examples of this kind, as I am well aware. But justice is steadfast, and can not be influenced by any depraved institution of man's devising. These things are certain. Now I will state a problem, the consideration of which calls for somewhat greater effort on our part.

Kings 2. 5

Polybius, in
Selections

CHAPTER XVI

Should the Ambassador Deceive His Sovereign If He Believes It to Be to the Latter's Advantage?

The question is whether the ambassador who, while endeavoring to further his sovereign's interests, deceives him, is guilty of wrongdoing and disloyalty. For my own part, no matter what distinction the excellent Tasso may make, I am of the opinion that such a thing should never be done by ambassadors. For if Postumius or Manlius or both of them ruled that their famous sons, in spite of the success of their undertaking, should suffer the death penalty for having fought contrary to the orders of their fathers, who were the commanders-in-chief; if this most just precedent was afterwards regarded as renewed in the case of Fabius; and if Cicero in the first book of his *De inventione* raises a similar question in regard to Epaminondas, why should we permit laxity in the case of the ambassador? In those cases there was no longer any doubt about the success of the affair; in that of the ambassador, even if success should be definitely assured, there is ground for hesitation. In both instances, an order, which does not deserve to be slighted, is slighted. The Athenians were not at all of the opinion that ambassadors should have this license; they punished with death some ambassadors who had been sent to Arcadia, because they went by a route other than that by which they had been ordered to go. The punishment was inflicted in spite of the fact that they had been successful in their mission. Moreover, why did this same nation add to its instructions the words: "Let the ambassadors do in addition whatever good they can," if they believed that the ambassadors would do this from a sense of loyalty? But if they thought that the ambassador had no right to take the initiative even in regard to matters not mentioned, what would their opinion have been on the question before us? It is certainly more serious to act contrary to someone's express wish or commands than to follow one's own judgment in regard to something about which no specific instructions have been given. Why should the ambassador have the right to attempt anything apart from his instructions? Certainly a procurator, whom the ambassador resembles so closely that he seems almost identical with him, can not do anything of this kind. The ambassador is an interpreter, but is the man who reports something

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Livy 4. 29

Aelian 6

Aeschines

at variance with the substance of the negotiations, an interpreter?

199 Let us cite here the custom which Servius mentions, that even what
 Servius on
 Aeneid 11 was superfluous had to be reported by ambassadors, which clearly
 means that absolutely nothing should be concealed from the sovereign.
 In the ninth book of the *Iliad* it is said: "State your message, for that
 is the duty of ambassadors." And Plato, in the *Politicus*, says: "The
 race of heralds, bound to obedience, after hearing the sentiments of
 others, makes formal announcement of the same." Nor do I doubt
 that in a case where definite instructions have been given, ambassadors
 should not be allowed to diverge even a finger's breadth from them.
 Further, though Tasso censures Homer for representing ambassadors
 as using the very same phrases as those in which their instructions
 were given to them, I am inclined to praise him as a champion of our
 own view. Again, did Virgil have any scruples in this matter? Or
 Aeneid 4
 Gerusalemme
 liberata 1 Tasso himself? For they, while they do not repeat with the same
 exactness as Homer, also show a strong tendency to retain the same
 formula. The Homeric passages are in the second, seventh, eighth,
 ninth, and other books of the *Iliad*. Moreover, Homer's adherence to
 the plan of exact repetition should not be criticized, because in the case
 of heroes it would not have been possible to proceed on a different sys-
 tem. Plato also (as we have reported) represents all embassies of
 this kind as from Jupiter; and in regard to the Roman ambassadors,
 who were sent on one occasion to Tarentum, Valerius speaks as fol-
 lows: "In accomplishing their mission they used the same words
 Val. Max. 2. 2 in which it had been communicated to them." Appian agrees with Va-
 lerius on this question, although (as we shall state a little later) the
 rest of his account shows some points of difference. Livy, more-
 over, in his twenty-first book reports something similar about Quintus
 Fabius, saying: "Quintus Fabius did not ask a single question except
 200 the one which he had been instructed to ask, etc." The ambassador,
 therefore, should not announce anything that is false, or pass over in
 silence anything that is true or anything that has been done or said.
 He should not be silent with the sovereign to whom he is accredited
 as ambassador, since the latter on discovering it will feel a righteous
 indignation; and just as marriages, the contracts of which have been
 made only after many lies have been bandied to and fro, frequently
 turn out to be sorely lacking in all the elements of happiness and
 harmony, so undoubtedly the same thing will happen in the case of
 international negotiations conducted in a similar manner. This course
 of procedure is still more objectionable with the sovereign of the

ambassador, who, inasmuch as he has prescribed a certain form of embassy, has certainly deprived the ambassador of all license of this kind. I know what answer or objection can be made to me: that friends should be deceived who otherwise would fall into error; and that in their interests it is necessary to resort even to manifold lies and various forms of deception, as Plato (in the second and fifth books of his *Republic*), Xenophon (in the fourth book of his *Memorabilia*), and others write, adding further instances of a similar character. These things, however, do not affect the ambassador. The conclusion of the matter is that the ambassador should keep in mind the fact that he is doing his duty best when he is keeping within the limits of that duty. Nor should he presume to be the judge of his master's will and to regulate it. "Obedience," said God, in whose likeness the princes of the earth are made, "not sacrifice, is what I want." The duty of the ambassador, says Procopius, the ambassador of Justinian, in the first book of his *Gothic War*, is to perform with fidelity the task imposed upon him. To these principles, which I think are satisfactorily established, I shall add that ambassadors should not discuss any other matter than that assigned to them; and this holds even though their refusal to discuss any other prevents their discussing the one intrusted to them. The ambassadors from King Philip to Titus furnish an example (it is among the fragments of Polybius), and Fabius, to whom we have referred, is another illustration. Moreover, if they have been ordered to return without saying anything further, this also they ought to do faithfully, as Guicciardini in his third book says was done admirably by the Florentine ambassadors in their negotiations with Louis the Moor [Ludovico Sforza, Duke of Milan]. These matters do not need a more elaborate confirmation.

Sam. 1. 15

Procopius, Bellum Gothicum 3

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CHAPTER XVII

The Powers Implied in Free Instructions

Polybius and
Appian, in
Selections
Dionysius 3, 6

It is more difficult to judge the nature of the rôle assigned to the ambassador who has been ordered to do what shall seem best to him. For there is no doubt that embassies of this kind were customary. They were sent to Rome by the Carthaginians and the Achaeans; by Rome to Coriolanus and to the plebs who had seceded. That they came from individual states of Latium to a certain convention is mentioned by Dionysius; we know from the second book of Xenophon's *Hellenica* that they were sent by Athens to Lysander. They were sent by the Olynthians to Sparta, as we learn from the fifth book of the *Hellenica*; and to Athens from Lacedaemon (see the seventh book of the *Hellenica* and Plutarch's *Alcibiades*). In the last century an ambassador was sent by the Duke of Brittany to

Comines 1

the Princes who were leagued against Louis XI, armed with such power that he received a blank sheet of paper on which he was to write down what he himself wanted done by his Duke in the negotiations with the Princes. Circumstances, accordingly, sometimes demand that no definite instructions shall be given to the ambassador, but that full power of doing whatever he believes to be wise under the circumstances shall be delegated to him. Thus the Athenians used to add: "Let the ambassadors do in addition whatever good they can."

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This is the meaning of Demosthenes' remark that words and opportunities are given to ambassadors, meaning the power of transacting business in whatever words and at whatever opportunity they choose. It is undoubtedly a familiar fact that it is usual for many things to happen in regard to which nothing definite can be included in the instructions. Certainly affairs in which the actual handling of the situation can suggest more definite plans ought to be intrusted to ambassadors outright. In ambassadors of this kind the greatest prudence is requisite. All men can not perform such embassies equally well. Sovereigns should pay strict attention to the appointment of such ambassadors. These were Tasso's reasons for maintaining that the ambassador should be allowed to make a considerable number of changes in the language and other parts of his instructions. For why all this care if the ambassador was to announce nothing at all but what was transmitted to him in the form of instructions and directions?

Livy 45

The reasons are sound, unless we are dealing with a case where the instructions have been specific. They are supported, moreover (if indeed Tasso did not derive them from that source), by the remarks which Cicero in his oration for Fonteius makes with such effectiveness about the duty of a judge. But although the power of this ambassador is so great, he should always remember the precedent established by Menenius, that if anything should happen contrary to the expectations of all, he should refrain from giving his authority free rein, just as Menenius and his colleagues did who, although they had been granted full power by the Senate to make peace with the plebs, concluded that it would be wrong to grant the demands which the plebeians made because, as they said, what was demanded transcended the expectations of everyone. Perhaps this shows that our law excludes from instructions, however general they may be, every-
thing which the person giving the instructions has not been able to
take into consideration. At any rate, the policy of Menenius gains
marked approval through the contrary action of Cassius, about which
Dionysius writes: "The Senate decreed that the consul Cassius
should draw up the terms of the treaty with the Hernicians according
to his own judgment, and that whatever he decided should have their
approval. Nevertheless they took umbrage at the arrogance of the
man who, after being honored by the Senate, did not in turn honor
the Senators by communicating his plan to them, but carried through
his negotiations as he himself thought best." I am, however, aware
that this precept is subject to modifications under circumstances which
would not admit of the delay caused by Menenius. But we have been
speaking of what good faith and deliberate prudence, not precipitate
action demand; and it has been demonstrated as incontestably true
that no one, with whatsoever power he may be invested, can do any-
thing he likes, without the knowledge and authority of his sovereign,
or of him who has given him the commission. Other examples illus-
trating this conclusion are available: Hercules, Duke of Ferrara, Philip,
Archduke of Austria, Antipater, Agrippa, Joab, of whom the first two,
insomuch as they employed the power given them, have received no
commendation, while the others have won approval because they
reserved for their masters the credit of completing the negotiation.
Let him who wishes read in Guicciardini, Curtius, Dio, and the
Holy Scriptures the history of these cases. I have merely pointed
them out. I maintain that such action forms an essential part of the
good faith of ambassadors; for it is only fair to keep something for him

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Dionysius 8

Guicciardini 4, 6
Cassius Dio 4, 9
Samuel 2. 12
Curtius

- who has given everything to you. But if speedy action is essential, there is no reason why the sovereign should assume any lack of good
 204 faith on the part of the ambassador, even if he acts contrary to the former's views and warnings, since the cardinal point of the instruction was that the ambassador should act according to his own judgment. Moreover, just as ambassadors of this kind ought to abstain from certain things which they have permission to do, so on the other hand they are wholly justified in doing many things in regard to which not a word has been said. For example, in the embassy of Villius to King Antiochus, it proved to be of the utmost importance that he knew (for I prefer to believe Polybius and Appian) how to make Hannibal an object of suspicion to the King. I do not think that this matter had ever been considered by the Romans, for it is certain that it was not included in his instructions. What did Clodius, the ambassador of Lucullus to Tigranes, do in furtherance of his plan to demand the surrender of Mithridates? He used the intervening time to win over to the Roman cause many very powerful princes. The Lacedaemonians whom we mentioned in the third chapter of the second book, were intercepted by Sitalces at the request of the Athenian ambassadors, and the Athenian people were wholly beyond the range of suspicion in regard to the matter. Athenian ambassadors, when they were staying at Sparta on other business, made a notable reply to the Corinthian ambassadors there who were speaking ill of the Athenian people; and Thucydides has reported in the form of a dialogue the protracted dispute of the same Athenians with the Melians. Livy has similar instances, and gives the speeches of ambassadors of almost every kind. Xenophon is especially emphatic in extolling the virtue of Agesilaus, because while performing the duties of an embassy he had been accustomed to accomplish many other notable achievements. But is it
 205 permissible to do these things? In our last book we said that it was. Yet it is not permissible to commit an act of hostility against him to whom the embassy is sent. To be sure, it does seem as if one might speak differently of him who is sent to an enemy, because to bring disasters upon one's enemies and to rejoice in them are not regarded as the acts of an unjust or malignant person. Nevertheless, inasmuch as the understanding on which the ambassador has been admitted does not include recognition of authority to transact other business in addition to that which is to be transacted with him to whom he has come, any hostile act, as I have said, will be not only contrary to his duty, but also contrary to law. Moreover, not having been sent to any

Plutarch
 Livy 35
 Polybius 3
 Appian 11

Plato,
 Philebus
 Xenophon,
 Memorabilia 4

person in regard to the other business, he is not an ambassador so far as that business is concerned. The ambassador, besides, while striving to show the highest degree of fidelity and diligence in the affairs of his master, should be careful not to undertake anything inexpedient for, or discreditable to, his sovereign. For Quinctius (if we disbelieve those who say that the Senate gave the instructions), when ambassador at the court of Prusias, in his endeavor to compass the death of Hannibal, took measures that were wholly out of keeping with the dignity of the Roman people. Furthermore, a certain Victor and Urbicius are set in an unfavorable light by the following account in the thirtieth book of Ammianus: "An embassy was sent to the Parthian king to warn him not to covet Armenia. It was a just and independent embassy till it swerved from the straight and narrow way by taking over, quite apart from its instructions, some small tracts of land which were offered to it in Armenia itself." This action on the part of the ambassadors, who did not recognize the unseasonableness of such a pledge and responsibility, was not only contrary to their duty, but was also a violation of the right of embassy. For the taking over of those regions was a hostile act, and both in going and in returning the ambassador should remember his function. Would they have been guilty of this double offense, if they had been 206 trained in the rights and history of embassy? Clodius, whom we just mentioned, was certainly opposed to such procedure. If he formed certain alliances, that is not open to any kind of just criticism. This is what I had to observe in regard to the fidelity of the prudent ambassador. I know, moreover, that these doctrines are clearly self-evident, and on that account I do not strive to explain them in greater detail.

Plutarch
Livy 39
Appian 11

CHAPTER XVIII

The Prudence and Courage of Ambassadors

- The following discussion deals with the prudence and courage of ambassadors, and in it the first point that must be insisted on is that he who is not imperturbable in the face of every form of violence and every contingency should at least recognize this failing in himself and should not undertake an embassy. He should imitate
- Phil. 12 Cicero rather than Demosthenes. The former, influenced by this consideration, prudently asked to be excused from the embassy to
- Plutarch Antony, and evaded the mission; the latter acted with imprudence, for having been appointed ambassador to Alexander and having even gone part of the way, he subsequently from fear of the King's high temper threw up the embassy and returned. After undertaking an embassy the ambassador should next consider when he should be bold and when he should yield to circumstances. Popilius was both bold and prudent in flatly refusing to tolerate any delay on the part of Antiochus, for the young King of Egypt, on behalf of whom the Roman was executing the embassy, was not in a position to suffer any delay without peril to his life. Let us recall what happened to
- Sallust, Bellum Jug. 207 the grandson of Masanissa because the Roman ambassadors, in dealing with Jugurtha, failed to plead the cause of the young man and to execute their embassy with the sternness which justice demanded. We
- In Selections ought, therefore, to dissent from Polybius, who insists that the action of Popilius was harsh and arrogant. Were those kings such that an ambassador of the Roman people could not command them?
- Livy 21 Hannibal, who used to obey the Romans just as kings obeyed him, was spoken of by the consul as a taxpayer, a tributary and a slave of the Roman people. Cicero, moreover, supports this view in his *Fourth Verrine*, where he likewise speaks of kings as slaves. Are we to think that the garrulous and reckless grammarian Isocrates
- In Selections (for so Polybius describes him) was right in saying that the ambassadors of the Romans acted arrogantly, shamelessly, and lawlessly, when on the basis of a clause in the treaty they burned the ships and
- Appian 11 killed the elephants of Antiochus Eupator, and that Octavius, the leader of the embassy, was on this account justly killed by a robber at Laodicea? If an action is just, if it is on the authority of the person sending the embassy, if it is prudent—then is it not courageous?

These Romans acted justly; they acted in accordance with authority; and they acted prudently. But even if those who send the embassy are far less powerful than those to whom the embassy is sent, the ambassador will be able to adopt a courageous and dignified bearing, if the persons to whom he is to explain his mission are magnanimous. For example, when the Romans had given the Carthaginian ambassadors a response wholly lacking in moderation and fairness, Hanno, one of the ambassadors, after a long speech in which he criticized the Romans with marked freedom and outspokenness, concluded his address with these words: "If you are not willing to grant us peace, restore to us Sardinia and Sicily, by which, not for a period of time but forever, we purchased your friendship"; and in this way he aroused 208 the Romans to a livelier sense of shame and justice. The ambassador of the Privernians, of whom Livy speaks in his eighth book, acted well in a situation still more difficult for his native land. Go and read the account of it. Do not, however, be carried away by Livy, who thoroughly disapproves of the high spirit shown by the Privernian. For the embassy succeeded, as was right, and the consul's admonitions in regard to the Romans were sound. Diodorus gives some instances that are very similar to these. "The Romans," he says, "love even an enemy whose valor breeds a high spirit and a craving for victory." Numerous illustrations of this are available, and Cicero at the end of the first book of his *De inventione* says: "Often valor and pride, in which there is dignity as well as authority, are more effective in arousing commiseration than humility and prayers." Other forms of opposition, however, should be guarded against; for example, the uncompromising spirit of the Aetolian ambassadors 209 injured their cause at Rome. They were arrogant and treacherous to the Roman people, and having been conquered they ought not to have acted in so overbearing a manner, since another Roman principle consisted in the complete subjugation of the proud. The Carthaginians showed more prudence in approaching Scipio after the manner of petitioners; while the Spartans were imprudent, when on one occasion, asking aid from Gelo, they conducted their negotiations with the tyrant in a tone of marked insolence. The story is told by Herodotus in his sixth book. We ought to guard against excess in anything. I should call the Cimbrian ambassadors savage and stupid rather than courageous who, although their nation had been defeated and driven to dire straits by Marius, nevertheless threatened him. For one must approach a stonger power with petitions, not assail it with abuse;

Dio Cassius,
in Selections

In Selections

Livy 30

- 209 one must placate it with prayers, not incense it by accusations. There are so many examples (and I have already mentioned them) of ambassadors who have transacted their business not with defiance but as humble suppliants that there is no necessity of even a single additional instance being cited here. But assuredly the act of the Venetian ambassador which took place within the memory of our grandfathers should not be passed over in silence. The Venetians were hard pressed by the arms of all Europe when Bayezid, the commander-in-chief of the Turks, speaking in behalf of a Mantuan prince who was a captive in the hands of the Venetians, made the announcement that their ambassador must undertake without further parley to secure the immediate liberation of the prince. Nor would the barbarian listen to the ambassador when he replied that the matter did not lie within his competence, but nevertheless he would venture to guarantee that the Venetian Republic would readily and gladly grant the commander's request. In short, the ambassador, overwhelmed by the man's harshness and injustice, actually promised something which he had no power to grant and which, if you consider and examine the question apart from the special circumstances, he ought not to have promised. But at so unusual and dangerous a national crisis it was the part of the most courageous ambassador to forget his courage entirely and follow a course that was cautious rather than heroic. Men noted for their prudence have attested their approval of this principle. Aeschines makes the general statement: "Everyone, both in public and private life, is confronted by the necessity of adapting himself to circumstances." In this chapter we ought to have spoken of the young ambassador who was put to death by order of Queen Teuca. Polybius relates the incident in his second book.
- 210 He writes that when she expressed approval of the raids made by her followers, on the ground that they were in accordance with royal customs, the ambassador said: "We shall see to it that you are compelled at no distant date to reform those royal customs,"—a spirited reply, to be sure, but hardly well-timed. We ought also to have considered the Romans whose freedom of speech, as we are informed by the same author, the Carthaginians bitterly resented; and it would have been proper for us to discuss other cases. But we have treated this phase of our subject elsewhere, and from what we have said here, it is as clear as can be that prudence is not always—no, not even in the case of that young man—desirable. Let us, therefore, rather say that the ambassador should sometimes abandon the peti-

Guicciardini 9

Polybius 15

tions which he has prepared and have recourse to defiance, as Veturia, the mother of Coriolanus, shows. The story has been told by Livy. Livy 2
Perhaps the only case in which it is permissible for the ambassador to depart from definite instructions is when he finds the situation distinctly different from what it was supposed to be when he was sent, or when changes made just before his arrival have brought about a difference. New plans must be formed to suit new situations. This doctrine is certainly supported by another example also, that of the ambassador (it is cited by Plutarch) whom Lucullus sent to the Parthians, as well as by the instance (it is given by Xenophon in the fourth book of the *Hellenica*) of the Boeotians who were sent to Agesilaus. As regards our remark about the desirability of changing from supplication to indignation, its converse is also true. In this respect opposites are treated alike, and the same principle holds in changing any other instructions. In a case where there would be no danger in delay, I do not see why the ambassador can not write home 211 to his sovereign and advise him of the things which seem to be at variance with his instructions.

CHAPTER XIX

The Ambassador Should Assert the Dignity of His Embassy

I want ambassadors to have a high and worthy spirit, not only in great affairs but in everything, and to refuse to tolerate the slightest infringement of their dignity. For example, certain ambassadors of the Germans, noticing some persons in foreign dress sitting in the section assigned to the Senators at Rome, asked who they were, and on hearing that this honor was granted to the ambassadors of those nations who excelled in valor and in friendship for the Romans, exclaimed that no one in the world surpassed the Germans either in arms or in fidelity. Thereupon they walked over and sat down among the Senators. Ambassadors are accustomed (and properly) to insist with the utmost emphasis that no one else, unless some reason makes it imperative, shall have a more honorable place than they; they will not submit to anything of the kind. For example we see that Martius was unwilling to cross the river, and there was method in the jest with which he lured Perseus to him: "The younger," said he, "ought to come across to the elder and the son" (Perseus' father was named Philip, which was the cognomen of Martius) "to the father." We see that Orobazus, the ambassador of the King of the Parthians, was put to death by the King for conceding to Sulla, the Roman commander, a more honorable seat in the Assembly. We see that Demagoras was fined at Athens, because conforming to the custom of the race he paid adoration to the King of the Persians. Demades also was penalized for rendering to Alexander honors of a similar kind, to which the Greeks were strongly opposed. What ought to be done in such a case? The Venetian ambassador found his cap nailed to his head because he did not pay to Duke Moschus the honor of uncovering. I should much prefer to give up the custom of wearing a cap rather than, by rigid adherence to the opinion that one's rights should be insisted upon to the utmost, involve myself or my sovereign in such troubles. The prudent ambassador must be well provided with plans by which to extricate himself from all such situations. One ambassador, to avoid conforming to the Persian rite of adoration and yet to escape accusation for his failure to conform, dropped something, and when he bent over to pick it up, seemed to the barbarians by his posture to have observed their custom. Sometimes even ambas-

sadorial dignity ought not to be rated so high as to prejudice the consideration of the proper plan (the ambassador will estimate this according to his prudence) for the expeditious accomplishment of the mission. So perhaps the ambassador of Theodosius acted shrewdly when he dismounted on meeting the Persian king, for the barbarian, greatly impressed by so signal an honor, granted the ambassador's request. Some Roman ambassadors, however, who gained their demands by flattering and coaxing Khosroo, likewise king of the Persians, were censured for having acted in a way which was not at all in keeping with Roman dignity. Furthermore, my point is certainly strengthened by the fact that an ambassador, also a Roman, wished the Athenian ambassador to speak first in the Assembly of the Aetolians, because the latter was sure to enlarge upon the atrocities of Philip, which might arouse the Aetolians to war, and this was what the Roman wanted. But what if the conduct of the sovereign to whom he is accredited is such as to prevent the ambassador's maintaining his dignity? He ought to consult his own sovereign as to what action is necessary; in the meantime let him restrain himself so as to avoid, as far as possible, every indignity. If he is unable to avoid insult, let him realize first of all that no affront, even the most serious, has any relation whatever to him personally. This was the doctrine of Zeno, who, on being asked how he would bear insults, replied: "Like an ambassador who is dismissed without an answer," thus indicating the most trifling kind of injury and pointing out that it did not affect the ambassador personally at all, but only the embassy. The same principle holds in the case of every affront. My interpretation of Zeno is based on the teaching of his school. Nevertheless Pelagius, the ambassador to Totila, seems to have been of a different opinion, for he says: "A wrong is done to an ambassador not only if he should suffer physical violence but also if he should be dismissed without accomplishing his purpose." But I should be inclined to subject these words to Zeno's interpretation. Here the answer made by another ambassador is appropriate, who on being asked whether he was present in a public or private capacity, replied: "In a public capacity, if we obtain what we want; but if not, in a private capacity," showing that injury is not done to him who executes the embassy, but only to him in whose name it is executed; and in his loyalty the ambassador was willing to bear every insult. It follows therefore that the manner in which the ambassador should act, either in avenging or suffering an insult, is not a question for him to decide, but for his sovereign. On this account

Procopius,
Bellum Persicum 1

Livy 35

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Diogenes

Procopius,
Bellum Gothicum 3

Plutarch,
Lycurgus

Val. Max. 2. 2 praise has been accorded to the ambassadors sent from Rome to Tarentum who, although they were pelted with dirt there, are reported
214 to have made no complaint but to have confined themselves to explaining their mission. For if it is not the ambassador who suffers the wrong, what has he to do either with avenging or disregarding it? He is wholly unaware of the extent to which the sovereign to whom the injury has been done takes it to heart. In the *Selections* we find the story from Appian that a Roman ambassador, after being doused with urine in the theater amid the applause of the mob, and thrown out of the place as a barbarian, made this spirited retort: "I accept the omen, for you give more than we ask; and you shall wash this robe in blood. Now, men of Tarentum, make the most of your brief period of rejoicing, for your mourning will be long." Nor are these things inconsistent with what I have said before and with my definition. I still insist on intellectual preeminence as a qualification of the ambassador, but I maintain that the question of how an insult shall be followed up does not concern him. But now it is time to revert to the treatment of temperance.

CHAPTER XX

The Prudence and Temperance of Ambassadors

Resuming my discourse on temperance, I am of the opinion that the old proverb on the acceptance of gifts should be adhered to: "Not all gifts, nor indiscriminately, nor from all persons, for (as the Emperors Severus and Antoninus admirably summed it up) to accept gifts from no one is crude, but to accept them promiscuously is degrading, and to accept all that are offered is greedy." I confine my remarks here almost exclusively to gifts, because nothing occurs more frequently than rumors of ambassadors having been bribed by some gift, and nothing more easily creeps in and corrupts ambassadors' sense of duty than the development of an immoderate desire for gifts. For unlike other forms of indulgence the acceptance of gifts, in cases where these are classified as examples of liberality, can not be called vicious, and on this account it is especially likely to deceive. The ambassador ought not to accept gifts which are given with the intention of bribing him. Fabricius was unwilling to accept gifts from Pyrrhus, for the king did not offer them to do him honor (whatever Plutarch may attest), but to buy the good-will of the Roman and with criminal intent, as Livy, Valerius, and others more correctly report. The prudent ambassador will easily recognize these treacherous gifts; the Thebans and others, whom we have mentioned in the thirteenth chapter, recognized them. The temperate ambassador will refuse them, and the nations referred to refused them. "Neither a good man nor God should accept offerings from the wicked." But presents which are given to show honor and good-will ought not to be spurned. This is self-evident and is established besides by thoroughly tested examples. For instance, Pelopidas, the ambassador to Artaxerxes, refused all gifts but those which were of this kind. The same course was followed by Clodius, the ambassador of Lucullus to Tigranes. Furthermore, there are some gifts which ambassadors should be glad to accept; so far from truth is it that they should refuse all. These are certain customary presents. They are those which are generally given to ambassadors on their departure. According to Tacitus, the Germans were even in the habit of pointing them out, and we have the additional information from Ammianus that they were very indignant whenever they failed to obtain them. There is no danger of

D. 1. 16. 6. 3

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Aristotle,
Ethica 4

Livy 13(periocha),35
Val. Max. 4. 3
Aur. Vict.,
Vir. ill.

Germ. 16

- 216 corruption here, for the matter is generally settled in such a way that
 Germ. 16 the ambassador is not under any obligation to the donor. If the ambassador should rule that gifts offered by a munificent sovereign should be diverted to the advantage of his state, he would undoubtedly perform a laudable action. Demosthenes boasts that he did this with Philip. There may be other reasons also on account of which ambassadors should not refuse gifts. But why should our ambassador, who is trained in moral precepts and well-grounded in history, demand further attention on our part? He had to be initiated, as it were, by us; that we have done. Now he should be left to his own genius, sound judgment and virtues, and forthwith he shall be so left. The action of the ambassador who appropriates as a gift for himself even more than has been offered may sometimes be a sign of discrimination. There is an instance in Plutarch. He records that two robes were sent to the Athenian ambassador that he might take the one he preferred as a gift to his daughter. The ambassador, however, took both of them, remarking: "My daughter is more competent to choose." In fact in a situation of this kind, except that one must take care that the value of the things does not convict him of avarice, the recipient should consider the possibility of the donor's preferring such action, which will happen in the case of one who is liberal, friendly, modest, and a little bit afraid of offering too much. Enough about gifts. What else is there? It is not sufficient for the ambassador to refrain from accepting presents, if he is niggardly along other lines. And although liberality does not entitle a man of rank to praise, yet his
 Plutarch, Lysander
 217 lack of it when on an embassy gives him a distinctly bad name. For this characteristic of men of the highest rank is not a thing which can be acquired; it is implanted in them and is essential to them, and he who is without it is not one of them. Here, however, I ought in prudence to draw attention to the fact that the ambassador, while shrinking from the reputation of being avaricious and niggardly, should be careful not to be guilty of—I do not say prodigality, for such a person can not become prodigal—but of some offense against his embassy and its rights through contempt of money. Do you ask for an example? I shall give you a very clear case from history. Ambassadors sent to Rome by the Aetolians were intercepted on the road by the Epirotes, who were allies of the Romans. They were given an opportunity of purchasing their liberty by paying five talents each, and later when they pleaded poverty, three each. All of them paid and were accordingly dismissed, except one—the only really

rich man among them—who refused to pay anything. His avarice, Polybius says, was so great that he preferred to pine in captivity rather than pay even so small a sum of money for his release. Undoubtedly, if he preferred money to his own welfare, his conduct was sordid, but if he was appealing to the right of embassy, he acted with prudence. Polybius in fact intimates that the affair made him famous, for a letter subsequently arrived from Rome, ordering the release of the ambassadors, and he was not only liberated but was the only one who executed his embassy. For other phases of the virtue we are discussing, the works of the philosophers must be consulted. I have mentioned only those which more especially concern embassies. But I must not omit to state in connection with the story just related, that if an opportunity for the transaction of the business of 218 the embassy should be spoiled through delays caused by safeguarding its rights, one should tolerate the loss of these privileges rather than suffer the whole embassy to come to naught. This has been thoroughly tested, and it is not necessary for me to demonstrate it by arguments. Why should I tell our ambassador of other forms of meanness—actions which have all the ear-marks of meanness—and bring them forward as things to be avoided? What man, provided he is not absolutely base, does not feel that that was a very sordid action which the three Florentine ambassadors (they were men of patrician families too) committed not very long ago? Accredited to Charles V and Clement 28
Giovio 28
VII at Bologna, they took with them some merchandise which it was their intention to bring into the city exempt from duty as part of their equipment as ambassadors. But the tax collectors, scrutinizing the goods and detecting the shabby trickery, exposed it, thereby moving the Emperor to laughter but the Pope, who was himself a Florentine, to anger. The ambassadors were dismissed without a hearing and in disgrace. Who does not know these and similar instances? Who wants me to point them out? I conclude this discussion with that maxim of Plato's: "To say and to do only what is seemly is the part of the sober and prudent man." This is in the *Timaeus*. I proceed now to the conclusion of my discussion of prudence.

Polybius, in
Selections

CHAPTER XXI

The Methods of the Prudent Ambassador

The prudence of the ambassador, so far as I can see, manifests itself either in his manner of receiving the counsel of others and observing their actions, or in the unfolding of his own plans and the right adjustment of his own actions. As regards the counsels and actions of others, 219 whether they are counsels offered to him or actions closely connected with his business, the ambassador, in order to avoid being deceived, will carefully consider two points: the person who gives the advice or who performs the action, and the advice which is given or the action which is performed. To consider the adviser only, though this is often done, is foolish and very dangerous; on the other hand, to consider nothing but the situation is equivalent to disregarding the distinction between persons and attesting one's confidence in the worthy and the unworthy alike. How foolish it is to pay attention to the adviser only Bk. 2 is shown by Livy in the passage in which he records that the Romans so trusted the Volscian Attius Tullius that they expelled the Volscians from the city with flagrant insults. This started the war in which, if the Fortune of Women had not intervened, the Roman name and empire might have perished. It was therefore not only foolish but pernicious as well to fix the eyes on the adviser only. Did not the same nation later see their city captured by the Gauls, because they scorned the informant for his lowly state and on that account the Livy 5 warnings of the gods? If the Pythian Apollo had not hastened to the rescue of these same Romans, who thought the Veientian seer in his exposition of the only means of storming Veii a worthless and untrustworthy adviser, would they ever have been able to capture that splendid city? Why need I say more? The profoundly wise speech of Hanno did not influence very many at Carthage, because, as Livy Bk. 23 tells us, his feud with the family of Barca (he was speaking against 220 Hannibal Barca) detracted from the weight of his advice. Carthage perished. My opinion is that we should scrutinize the whole past life of the person giving advice, and still more what his attitude on the subject in hand may be and in all probability will be. For the former estimate, being general, is not so reliable as the latter, which is closely connected with the action that is to be taken. It follows, therefore, that even though he to whom we lend our ears has the reputation of

being upright and above reproach, the prudent ambassador will not rely on him, if there is the slightest ground for distrusting him in regard to the question under consideration. For it is beyond dispute that we can not be and are not accustomed to be imposed on by the notoriously wicked, but only by those who, we think, are trustworthy; and we hold that we should trust and we do trust only men of good name. Further, just as I think that we ought not to rely on a good man if his relation to a particular situation neutralizes our confidence in him, so I am of the opinion that we ought to heed an unprincipled man or one whom we should not otherwise believe, if his position on the matter in hand is not at variance with but rather agrees with what has been said and advised. The Numidian nation, though often treacherous, kept faith in such a situation as we are describing. Masinissa, a Numidian and a bitter enemy of the Roman people, entered into, cultivated, and retained the friendship of the Romans with the highest degree of fidelity, for the nature of the relation dominated the man's character and he was trusted with perfect safety. These questions have a direct bearing on our subject of embassies, for if the safety or substantial advantage of the man offering the advice should depend upon the successful issue of the embassy, he can not, under the circumstances, even though otherwise wholly unworthy of confidence, be regarded as an adviser of no weight. In the question under discussion he is of much more importance. "Will you never consider the questions rather than the advisers?" exclaimed Appius to the people, when he was opposing some tribunician measure. Assuredly the question itself together with the place, time, and all other circumstances which not only accompany it but modify it in various ways should be submitted to careful consideration. A thing of great importance is neither readily believed nor as a rule spurned. If its magnitude exceeds the capacity of those who advocate it and its accomplishment depends upon their efforts, there is more prudence in spurning than in accepting it. Hannibal was once in a position of this kind. He had long been in doubt, now trusting, now distrusting those who promised that they would betray Capua to him. Was belief in them, before the Roman defeat at Cannae, within the possibilities of wise policy? To what extent did he actually believe them? Livy's twenty-second book must be consulted. On the other hand, if the personality of the adviser and the project itself combine in making a strong case for the adoption of the plan, we should not hesitate. But if our estimate of the adviser draws us in one direction and our esti-

Xenophon,
Anabasis 7

Livy 25, 26

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Livy 6

Livy 37

mate of the situation in another, choice becomes difficult. A conclusion, however, based on the situation is more reliable, for it is obvious that nothing can be more closely bound up with a project than the circumstances of that project. And even if a conclusion derived from the personality of the adviser is preferred to one rather more closely connected with the project, at any rate a conclusion based on the actual situation will be preferred to all others. Plato, or whoever is the author of the *Demodocus*, observes that one's relatives and intimate friends may be quite as untrustworthy as strangers, and he shows that if advice is offered to us, the project itself should be the chief object of our investigation. Martius, who
 222 after the annihilation of the two Scipios restored the Roman power in Spain, could have said nothing more certain to arouse his soldiers to heroic action than the words: "The hope with which this opportunity inspires me, soldiers, does not depend on chance or hazard, but is formed on the basis of the situation itself." The choice, however, as I have said, is difficult. For if a man, in general trustworthy, should describe to the ambassador something which he has seen, something for which he has the evidence of his senses, would the ambassador refuse to believe him on the ground that the event described seems inconsistent with reason? Things which are contrary to all expectation and all reason happen with great frequency. Just as men find credible many things which are false, so we ought to regard as true many things which seem incredible, as Aristotle says in the second book of his *Rhetoric*. I should always warn the ambassador against such confidence as would prevent his recognizing the fact that a thing may happen contrary to every well-grounded belief, or such as would exclude his endeavoring to have some resource prepared and ready against misfortune, which is the better plan. For nothing is so clearly defined that it may not baffle us. Moreover, such a sentiment as the following is always disgraceful: "I had not thought
 Livy 28 of it. I rely so fully on their fidelity that I would dread perfidy on their part." So said Scipio. He was speaking of Syphax and Masinissa. The distinction between the actions of others is made according to a similar
 Ibid. method. But here the opinion of Livy should receive especial attention: "Fraud makes a parade of honesty in little things in order that, when it is worth while, it may deceive with great profit." We ought not to have confidence in everything that is done. Again, why should I tell the story of ambassadors who have been deceived? I
 223 add that the ambassadors of Pharnaces, after being deceived by Caesar

in vain colloquies, furnished the Roman with the opportunity to win that swift victory over their King which was described in three words. Xenophon in the second book of his *Hellenica* notes that the ambassadors of the Athenians were deceived by Lysander and that the servitude of Athens was the result. A case in point is when one keeps putting off an audience to ambassadors, or withholds a reply, or eludes them in any other way. The same thing is true of a reply or anything else that is ambiguous. For how does an ambiguous answer differ from no answer? Fabius, therefore, when the Aequians gave an ambiguous response, very properly acted just as if they had replied unfavorably. Another member of the same family, when he saw the Carthaginians shilly-shallying in regard to his request, refused to participate in the undignified discussion which they proposed, and immediately declared war upon them—a splendid precedent, from which the ambassador learns to decline altercations that are beneath the dignity of his position, as well as responses that lack clearness, and other things of the kind. A clever method of freeing themselves from such delays was adopted by the envoys who, when they were continually hampered in their efforts to obtain an audience with the King by excuses in regard to his feeble health, retorted: "But we have come for a conference, not for a combat with him." Plutarch tells us how the ambassadors of the Thebans outwitted King Agesilaus. I do not give the story, and also omit other examples which could be introduced here. I have said enough. What remains concerning the ambassador's unfolding of his own plans and the organization of his course of action can be understood from those things which have been fully treated throughout the whole latter part of this volume. The fundamental and most important thing is that we should have a sound understanding of the situation in regard to which we are forming plans; otherwise it is inevitable that we should straightway err in our deliberations. What an error that was on the part of the Achaean who, when sent as an ambassador to King Ptolemy in order to ratify certain treaties with him, failed to distinguish among the various treaties, those which he had been instructed to ratify, and ratified them all! How great his error was, I repeat, we can all recognize, and Polybius tells the story in the *Selections*. It was a disgraceful mistake. There are, however, other mistakes, even if they are not so shameful and gross. Moreover, we should have an understanding not only of general situations but also of individual cases. One must be on one's guard especially against the fault,

Appian 14

Dionysius 9
Polybius 3

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or rather, as Plato says in the *Phaedrus*, the imbecility of unskilled physicians. For these, after they have acquired at some time or other a smattering of information from some medical book and have attained to a haphazard knowledge of the use of a few drugs, though they have no real understanding of the method and system of medical treatment, think that they are physicians. The prudent man and our ambassador ought also to know to whom, on what occasion, and to what extent this or that method should be applied, whether he has evolved the plan himself or has acquired it from history. And we ought to avoid that other fault which Plato in the tenth book of his *Republic* calls the failing of children. "We must," he writes, "form our plan according to the events which have occurred and, as in a game of dice, be guided by the trend of fortune in organizing our course of procedure in whatever way our reason indicates to be

225 best and most appropriate; we must not, as children are accustomed to do, adhere to one course because we have begun it." These remarks, however, about the advisability of changing our plans should not be interpreted as meaning that if anything does not turn out as expected, we should decide forthwith to abandon the undertaking. We should rather hold on, just as in navigation, until a more favorable breeze begins to blow, for if we do not do this but on the occasion of the slightest hindrance decide at once to sail in the opposite direction, how can we ever arrive at the place which we are trying reach? Critias alone of the thirty tyrants of Athens spoke wisely along this line.

Xenophon, Hellenica 2 This phase of our subject is of great range, and difficult to give instruction on; I think, however, that I have contributed something. To endeavor to treat the question in full detail would be an immense task and, as Xenophon writes in the *Hipparchicus*, to commit to writing everything that ought to be recorded is as difficult as to attain to complete information about the future. I have touched on certain general types and on what I may call the most important phases of the subject, and from these I think the ambassador will be able to

Livy 22 derive a good deal of information in regard to particular instances. But the circumstances themselves (and these are more likely to determine men's plans than men are likely to adapt plans to them) are the prudent envoy's best guide during the whole period of his embassy. Since, however, there is no one who is wise all the time and who does not on some occasions need faithful and prudent advisers (unless you imagine him a god, as Dionysius cleverly puts it in his eighth book), and since it is undoubtedly true that two eyes see more than one, I

strongly advise our ambassador to associate with himself a suite of 226 distinguished men whose assistance he can have in difficult negotiations. I shall not mention all the examples of notable men who have done this; the case of Scipio alone will be enough. He, while on his famous embassy to the kings, had with him the wise Laelius or, as Cicero reports, Panaetius. But in our sluggish and inert generation ambassadors are accustomed to pay very little attention to this phase of the office (to what phase do most of them pay any attention?); nor should the ambassador take with him in his suite only men who are wise and learned, but rather those who are acceptable at the place where the business of the embassy is to be transacted. This will be according to the approved precedent of Dinocrates of Messene, mentioned by Polybius in the *Selections*. In short, the ambassador should endeavor to have in his suite men of such character that every one of them could perform the duties of the embassy, just as it has been written of the army of the Fabii that every soldier in it could have assumed the rôle of commander.

Aur. Vict.,
Vir. ill.

Livy 2

CHAPTER XXII

The Perfect Ambassador

This, as it seems to me, is the sum total of qualities which go to the making of the perfect ambassador. We have discussed them individually, except in the case of certain virtues, which, however, are the ones which lead all the others in their train. The perfect ambassador is one who can accomplish efficiently the business and duties which have been assigned to him or which he himself has recognized the necessity of undertaking. He ought to understand to which class of ambassador he belongs, so as not to assume the wrong
227 rôle. He should himself always comply with the conventionalities and customs of the office which he has assumed, and should insist upon others observing them in their dealings with him. He should know the rights of embassy—their extent and their character—so as to have them ready for immediate application, and it should be his aim to guard their sanctity and sacred associations. His equipment and suite should be marked by a splendor commensurate with the dignity of him who has sent him, and his birth and present position should be of distinction. For it is only reasonable that rank, which even Cicero calls the “bland conciliator,” should have no little influence. We have shown by many examples what other blessings of fortune or nature are advantageous in this office. What power genius will give! What influence affability in word and kindness in
Cic. Orat. deed will have! There is need of great genius here, for nothing seems more difficult than to combine two qualities so widely separated as affability and dignity. It is not everyone who can retain his dignity while showing affability, but only one who is endowed with the highest qualities and whose reputation grows from more to more as he comes to be better known. There are stupid individuals who by letting their beard grow long, as the learned Galen
Galen, De
differentia
pulsuum 2 somewhere observes, and affecting other eccentric and repulsive mannerisms endeavor to obtain a reputation for dignity. They can not, however, aspire to the other quality, for if they permitted themselves to become known, they would forthwith sacrifice entirely the good opinion (for they do deceive many by their appearance) which men have of them. On the other hand, the distinguished man
228 can not afford to neglect the combination of these qualities, but must

observe carefully the instructions which the wise have given on the subject. The ambassador can not be without either of these qualities. He owes dignity to his principal function, and dignity without affability will tend to isolate him, for he is now no longer among his own people. What splendor, such as we desired, can the ambassador show, if he is isolated? Graciousness, which adorns all human activities, as Dionysius well points out in his eighth book, ought not to be lacking in our ambassador. The ambassador should not be so conscious of his principal rôle as to forget those—even men of the greatest distinction and sovereigns—who through their affability have attained to the height of fame. Nor is it at all doubtful that their kindness, far from injuring their reputation in other respects, has greatly benefited it. He should, however, have regard for his chief function also, and although he may keep it to a certain extent in the background, he ought not to permit its complete suppression. It is necessary that it should at times assert itself. If he asks for precedents, there will assuredly be no lack of highly laudable ones. I will, however, cite only the following incident, which Cicero and others have recorded as having happened to some Spartan ambassadors at Athens. One day there, when seated in the theater at an entertainment, they stood up and welcomed in their section an old man who had not been given a seat by any of his fellow Athenians, whereupon they were given rounds of applause by the whole audience. Although the incidents reported of the two Macedonian embassies do not differ very much from this, it is none the less a pleasure to quote them. They furnish the ambassador with another demonstration that he should know also how to do things, the performance of which, although they have not been assigned to him and do not immediately concern his embassy, may still be useful both to himself and his sovereign. Tasso also lays down the precept that the ambassador should always assist his sovereign's friends with all possible zeal and effort. This was done by the Macedonians who, happening to be present at the funeral of Publius Aemilius, a most distinguished man and one who had deserved well of Macedonia, assisted of their own accord as pall-bearers. In regard to the action of the other embassy, hear what Cicero says in the *Pro Plancio*: "They had been sent for some other reason, but aroused by his sudden peril, they assisted him in the hope that if they should render him aid, they would do something more welcome to their states than the accomplishment of their embassy and the fulfilment of their instructions." To this evidence

Plato, Epist. 4

Cic., Cato
Val. Max. 4

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Val. Max. 2. 10

we should add certain things which are of more importance. The ambassador need not be able to speak on every topic, but he certainly should be able to speak well on those subjects which fall within the departments of politics and civics. Moreover, he must speak in a style that is philosophical rather than rhetorical, and it should be in the native tongue of the person whom he is addressing. He must pay great attention to history of all kinds. He ought to have also some knowledge of civil law and of sound philosophy. He must feel that the highest kind of loyalty is due from him, and he should manifest this loyalty. Nor should he ever by cavil of any kind swerve from this, for it is the most important part of his office. The wicked deeds of Metrodorus and Alexa we have already censured. Furthermore, it is the duty of the ambassador not merely to explain his message but to support it by arguments, as Homer has somewhere indicated through the words of Neptune, and Plato in the eighth book of the *Republic*. We require in the ambassador conspicuous bravery, notable temperance, and unique prudence. No one will think that those Romans were prudent who approached the Tarentines when they were celebrating the Bacchanalia, and were thereupon foully insulted. For why should one approach drunken men with the purpose of explaining an embassy? That they were drunk we do not doubt. A fine example is set for all ambassadors by the envoys who were entertained with such magnificence during their sojourn at the court of Ptolemy: not the magnificence, not the treasure that was shown to them, not all the other manifestations of royal splendor, not the sumptuous banquet attracted their eyes or minds, but the city and the district; these they scrutinized with the utmost care. Do you understand the lesson, ambassador? But why should I delay you with further illustrations? Why should I a second time admonish you, as it were, to estimate at their proper value those courtesies which are wont to be shown to ambassadors, and if they are out of the common, to study their significance? Shall I mention the folly of the Rhodian ambassadors which resulted in the destruction of their state? They chose to explain the great courtesy shown to them at Rome as due to 'the Romans' fear of their countrymen. Shall I narrate other examples of this kind? Shall I say that the incident which Pliny relates of the Cyprian ambassadors was inconsistent with the dignity of the embassy? One of them belonged to a family said to be immune to venomous creatures, and by way of experiment he was thrown by the consuls into a vat of serpents. Such

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Iliad 15

Appian and
Dio Cassius,
in Selections
Plato, *Leges* I
Diodorus,
in Selections

Polybius,
in Selections

Pliny, *Hist. nat.*
27.3

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conduct ought not to have been permitted, even though it was a provincial embassy, for unless we make some concession here to Greek license, everyone must recognize that the embassy was degraded by it. Now I think I may appropriately close my discourse. I have, I believe, described the ambassador in more detail than Crates or Phalereus. Certainly, if we may rely on the testimony of Tasso, I have treated the subject with wider range than Ermolao Diogenes is said to have done, and so far as I know than Tasso himself. In regard to others (for I am not ignorant that others also have worked in this field) it is not for me to speak, because I have not read their books. Others will speak on this and the remaining subjects which, as a matter of fact, ambassador, I should have liked to expound to you. I have endeavored to transmit, so far as lay in my power, a pattern of the excellent ambassador, either specifically described or outlined in discussions of greater sweep, and after that I have made an effort to include my representation within the compass of this smaller picture, not however without the addition of some embellishments. But I shall not dismiss you without showing you what Socrates considered to be a still greater source of pleasure: a living image and example of the perfect ambassador. Nor do I think that Xenophon,
Oeconomicus I shall have need of the skill of Zeuxis or any artist of that kind. Cic. Inv. 2 For I am sure that this excellent pattern can be found and demonstrated in one man only—a man who has all the qualities which are needed to make this consummate ambassador of ours, and has them indeed in greater abundance and on a more generous scale than is required. That man is Philip Sidney.

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